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Mr Justice Swayne.

SUPREME COURT OF THE UNITED STATES.

No. ~~202~~. 177.

JOHN A. BAXTER AND AL., CLAIMANTS OF SHIP MARCELLUS, APPELLANTS,

v.

HUGH N. CAMP AND AL., LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

G. S. Gideon, Printer, No. 511 Ninth Street, Washington, D. C.

963

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United States of America, Massachusetts District, *ss.*

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty, before the Honorable Nathan Clifford, Associate Justice.

HUGH N. CAMP, of the city and State of New York, EDWARD W. BRUNSEN, and CHARLES SHERRY, Jr., of the State of Rhode Island, merchants and copartners, under the name of Camp, Brunsen, & Sherry, libellants,
v.
THE SHIP MARCELLUS,
JOHN A. BAXTER et als., claimants.
} In Admiralty.

United States of America, Massachusetts District, *ss.*

At a District Court of the United States, specially holden at Boston, within and for the District of Massachusetts, on Thursday, the tenth day of May, in the year of our Lord one thousand eight hundred and sixty, before the Honorable Peleg Sprague, Judge.

HUGH N. CAMP et als., libellants,
v.
THE SHIP MARCELLUS.

This libel was filed in court on the eleventh day of October, A.D. 1859, viz.:

United States of America, District of Massachusetts, *ss.*

To the Honorable Peleg Sprague, Judge of the District Court of the United States, within and for the District of Massachusetts.

The libel and complaint of Hugh N. Camp, of the city and State of New York, and Edward W. Brunsen, and Charles Sherry, the younger of that name, of the State of Rhode Island, merchants and partners, under the firm and style of Camp, Brunsen & Sherry, having their usual place of business in the said city of New York, owners of 176 boxes and 40 hogsheads of sugar, as per schedule annexed, marked A, lately laden on board the schooner "Empire," of Wells, in the State of Maine, whereof Uriah M. Hutchins late was master, against the ship "Marcellus," of Boston, in said district, whereof Hallett now is, or late was, master, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges and articulately propounds as follows:

First. That your libellants, before and at the time of the collision hereinafter mentioned, were the owners of 176 boxes and 40 hogsheads of sugar, of the value of ten thousand dollars, which, at the time of said collision, were laden on board the said schooner "Empire."

Second. That on the twenty-seventh day of September last, the said schooner, with said sugar on board, left her wharf in Boston and proceeded on her voyage to Bristol, in the State of Rhode Island.

Third. That at about seven o'clock, P.M., of said twenty-seventh day of September, the said schooner, then being on said voyage from Boston to Bristol, and with said sugar on board, was sailing out of said harbor of Boston; that while she was so sailing, the said ship "Marcellus," which was then sailing into said harbor of Boston, carelessly and negligently ran afoul of said schooner with great violence, striking her on her larboard side, and near or a little by aft of midships, and greatly injured and damaged said schooner thereby, and caused her to sink, so that said sugars were thereby totally destroyed and lost.

Fourth. That at the time the said schooner was run into by said ship, the said schooner was running through the Narrows, between Gallup's and Lovell's Islands; that said schooner was then staunch, tight, and strong, and in every respect well manned and appointed, and had the usual and necessary complement of men on board; that the hands were on deck and on the alert, and the mate at the wheel; that at about seven, P.M., they saw a large sail coming towards said schooner, which proved to be the said ship "Marcellus;" that, at the time, the said schooner was sailing close-hauled on the wind, on her starboard tack, and with all the sail she could make draw; that said schooner was on the windward side of the channel, steering southeast by south, and the wind was southwest by south, and was working up to the windward to give the ship all the room possible; that the said ship was sailing into said port of Boston at great speed, and had the wind free, and was able to pass said schooner without difficulty; that there were two-thirds of said channel to the leeward of said schooner; that as said ship approached said schooner, the persons on board said schooner hailed her to keep off; a reply came from the ship to luff on board the schooner, but this was impossible, as the schooner was close up to the wind; that the schooner did not alter her course, and ought not to have done so under the circumstances; that the ship, immediately after the hail to the schooner to luff, luffed and instantly ran into and upon the schooner, striking her near amidships, taking both masts, and cutting her down; that the ship and schooner both having lost headway, and the ship being still afoul of the schooner, they drifted together to the leeward shore; that said ship procured the assistance of a steam-tug, then present, which got her off from the wreck of the schooner, and took her away; that the schooner filled rapidly, and in about ten minutes after the collision sunk, and all said sugar was totally lost and destroyed.

Fifth. That the officers and crew of said schooner were, before and at the time of such collision, using all care and diligence in the management of said schooner, and used all due and proper care and caution to avoid said collision; and that after said collision, they used all efforts in their power to save said sugars and the schooner from sinking and destruction.

Sixth. That the said collision and loss were caused wholly by the culpable carelessness and negligence of those on board and managing the said ship, and would not have occurred if due caution and proper diligence had been used by them, and in no way by a want of care and diligence on the part of those on board the schooner.

Seventh. That said schooner was so injured and disabled by the force and violence with which she was struck, that she very shortly filled and sunk, in spite of the efforts of her crew, and all the libellants' sugars on board were totally destroyed and lost, to the damage of said libellants the sum of fifteen thousand dollars.

Eighth. That after the said collision, and the sinking of said schooner, the libellants, believing that a portion of said sugars might be saved, procured assistance of wreckers and others, and raised the schooner, and brought said sugars to Boston, and paid in expenses for so doing a large sum, as will appear by the Schedule B, hereto annexed. That said sugars so sold, by reason of the great damage to them by sinking, proved in the end not to be of sufficient value to pay such expenses, but sold for a less net sum than the expenses, as will appear by the Schedule C, annexed; and the libellants claim to recover, in addition to the value of said cargo of sugar, the excess of such expenses over and above the net proceeds of the sale of said sugars.

Ninth. That said ship "Marcellus" is now lying in Boston, aforesaid, within this district, and within the jurisdiction of this honorable court.

Tenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, and furniture, and that all persons having any interest therein may be cited to appear and answer, all and singular, the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages as aforesaid, with costs, and that the said ship may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

HUGH N. CAMP,
E. W. BRUNSEN,
CHAS. SHERRY, Jr.
By HENRY EDWARDS,
Agent and Att'y.
C. T. & T. H. RUSSELL,
Proctors for Libellants.

October 11th, 1859. Sworn to before me,
S. E. SPRAGUE,
Clerk.

Schedule A.

G & F A	74 boxes sugar.			
	35164 . .	5274 . .	29890	
G & F B	92	do.	do.	
	44492 . .	6673 . .	37819	
G & F H	10	do.	do.	
	4825 . .	724 . .	4104	
			71813 @ 7⅝ c.	$5,475 73
Tenez	40 hhds. Muscovado sugar, average net weight of 40 hhds. 1617 lbs.			
			64680 lbs. @ 5¾ c.	$3,719 10
				$9,194 83
	Insured per invoice, 5 per cent. add. add.,			459 74
				$9,654 57

Schedule B.

1859.		
Oct. 10.	Henry Edwards' bill for services and expenses getting up sugars, ...	$102 50
	Gibson's bill for wrecking same, ...	973 29
	George Littlefield's bill for services and expenses wrecking same, ...	200 00
		$1,275 79

Warrant and Monition.

Thereupon, to wit, on the eleventh day of October, A. D. 1859, by order of the judge, a warrant and monition issued, commanding the Marshal to give notice to all persons concerned, that the foregoing Libel had been filed, and that trial would be had thereon at a special District Court, to be holden at the United States Court-house, in Boston, in said District of Massachusetts, on Friday, the twenty-first day of October, instant, at ten o'clock, A. M. And to post a copy of the same notice at the said court-house, in Boston, seven days, at least, before said day of trial. And to take the said ship, her tackle, apparel, and furniture, into his custody. And to make due return of his doings herein. And the marshal made return as follows, viz.:

United States of America, Massachusetts District, *ss.*

BOSTON, October 11, 1859.

Pursuant hereunto, I have given notice to all persons concerned, that the libel within named has been filed, and that trial would be had thereon, by posting the substance of the within monition in the United States Court-house, in said Boston, seven days, at least, before the day within named for trial, and on the 11th day of said October, I took the ship "Marcellus," her tackle, apparel, and furniture, into my custody, on this warrant, this being the second attachment thereon.

WATSON FREEMAN,
U. S. Marshal.

Stipulation for Costs and Expenses.

On the twelfth day of October, A. D. 1859, personally appeared John A. Baxter, of Boston, in the District of Massachusetts, agent and part owner of said ship "Marcellus," and the claimant thereof, and produced for sureties, William Dillaway and Charles H. Dillaway, both of said Boston, and Joseph H. Adams, of said Boston.

And the said John A., William, Charles H., and Joseph H., submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally in the sum of two hundred dollars, unto the said libellants, that the said John A., should pay all costs and expenses which should be awarded against them in this suit, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

Claim.

October 12th, 1859. Filed in Court.

United States of America, District of Massachusetts, *ss.*

HUGH N. CAMP et al.
v.
SHIP "MARCELLUS."

And now John A. Baxter, agent and part owner of the said ship "Marcellus," comes and claims said ship in behalf of, and as the authorized agent of the owners of said ship, and says, that said ship is owned by the following parties, to wit: William Dillaway, Charles H. Dillaway, and John A. Baxter, of Boston; Josiah Gorham, Alexander Baxter, Sylvester Baker, Jr., James B. Crocker, and John Gorham, of Yarmouth; Sylvester Baxter, Asa Lothrop, Owen Bearse, Robert B. Hallett, and Thacher Hinchley, of Barnstable, in said District; that they are the sole, true, and *bona fide* owners of said ship "Marcellus," and that no other party is owner therein; and that he, the said John A. Baxter, is the agent of said owners, duly authorized in this behalf. And therefore prays that said ship may be delivered to him upon giving proper stipulations therefor in the premises.

JOHN A. BAXTER.

B. R. CURTIS,
H. A. SCUDDER,
Proctors for Respondent.

Circuit Court, United States, Massachusetts District, October 11th, 1859. Sworn to before me,

H. W. FULLER,
Clerk.

Stipulation to the Action.

Then, on the twelfth day of October, A. D. 1859, again personally appeared John A. Baxter, of Boston, in the District of Massachusetts, agent and part owner of said ship "Marcellus," and the claimant thereof, and produced for sureties William Dillaway and Charles H. Dillaway, and Joseph H. Adams, all of said Boston.

And the said John A., William, Charles H., and Joseph H., submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally, in the sum of fifteen thousand dollars, unto the said libellants, that the said John A. should abide by all orders and decrees, interlocutory or final, of the court, and should pay the amount of the final decree of the court, and all sums of money that he should be ordered to pay by the final decree of the court, whether it be in this or any appellate court.

Warrant to deliver.

Thereupon, by order of the judge, a warrant issued directing the marshal to cause said ship and appurtenances to be delivered to John A. Baxter, the claimant thereof, he having duly stipulated therefor.

On which the marshal made return, viz.:

United States of America, Massachusetts District, *ss.*

Boston, October 12th, 1859.

Pursuant to the within precept, I have caused the within named ship "Marcellus," and appurtenances, to be delivered to the claimant within named, and have taken his receipt for the same, as under written.

F. WARREN,
Deputy Marshal.

Boston, October 12th, 1859.

Received from Watson Freeman, marshal in and for the district of Massachusetts, the within named ship "Marcellus," and appurtenances, in the same state as when seized and detained by his deputy.

JOHN A. BAXTER.

Motion for Stipulation by Libellants.

January 20th, 1860. Filed in Court.

United States District Court, Massachusetts District.

January, 1850.

Hugh N. Camp et al.
v.
Ship "Marcellus."

In Admiralty.

And now the respondents in the above named cause, come and move that the libellants be ordered to file a stipulation for costs, and also for such damage as may be decreed to the respondents.

H. A. SCUDDER,
For Respondents.

Stipulation for Costs by Libellants.

Thereupon, to wit, on the twenty-sixth day of January, A. D. 1860, personally appeared Henry Edwards, of Boston, in the District of Massachusetts, and Edward Wyman, of Roxbury, in said district.

And the said Wyman and Edwards, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of two hundred dollars, unto John A. Baxter, the aforenamed claimant of the ship "Marcellus," that the said Hugh N. Camp et als., should pay all costs and expenses which should be awarded against them in this suit, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

Answer. January 30th, 1860. *Filed in Court.*

United States of America, District of Massachusetts.

To the Honorable Peleg Sprague, Judge of the District Court of the United States, within and for the District of Masachusetts.

And now John A. Baxter, William Dillaway, Charles H. Dillaway, of Boston; Josiah Gorham, Alexander Baxter, Sylvester Baker, Jr., James B. Crocker, John Gorham, of Yarmouth; Sylvester Baxter, Asa Lothrop, Owen Bearse, Robert B. Hallett, and Thatcher Hinckley, of Barnstable, all in said district, intervening for their interest in the ship "Marcellus," appear before this honorable court, and for answer to the libel and complaint of Hugh N. Camp, Edward W. Brunsen, and Charles Sherry, against the ship "Marcellus," aforesaid, her tackle apparel, and furniture, and against all persons lawfully intervening for their interest in the same, allege and articulately propound as follows:

First. As to the allegations contained in the first article in said libel, the respondents say that they are ignorant thereof, and can neither admit nor deny, but require the libellants to prove the same.

Second. As to the allegations contained in the second article in said libel, the respondents also say that they are ignorant thereof, and can neither admit nor deny, but require due proof thereof.

Third. As to the allegations contained in the third article in said libel, the respondents admit that there was a collision between said schooner "Empire" and *and* said ship "Marcellus" therein referred to, and that said schooner was thereby damaged so that she sunk, but the respondents deny that said ship "Marcellus" carelessly and negligently ran afoul of said schooner, or that any negligence or carelessness or fault existed on the part of said ship in the matter of the collision referred to. They admit that said ship came in contact with said schooner on her larboard side, but as to the particular point of collision between said vessels, the respondents are personally ignorant, and require the libellants to prove the same. And the respondents further, upon their information and belief, deny that said sugars were totally lost and destroyed by reason of said collision, as alleged by the libellants.

Fourth. As to the allegations contained in the fourth article in said libel, the respondents admit that at the time of said collision, said schooner was running through the Narrows, between Gallup's and Lovell's islands, but as to all other matters alleged and contained in said article, the respondents deny the same except so far as they are hereinafter expressly admitted.

Fifth. As to the fifth article in said libel, the respondents deny the matters therein alleged.

Sixth. As to the matters alleged in the sixth article in said libel, the respondents also deny the same.

Seventh. The respondents say that they are personally ignorant of the matters alleged in the seventh article in said libel, and require due proof thereof.

Eighth. And as to the matters alleged in the eighth article in said libel, the respondents also say that they are personally ignorant thereof, and require that the same be proved.

Ninth. As to the ninth article in said libel, the respondents admit the allegation therein contained.

Tenth. The respondents deny the allegations contained in the tenth article in said libel.

Eleventh. And the respondents, further answering, say, that on the afternoon of the day on which said collision is alleged to have occurred, said ship "Marcellus" being in good order, and well rigged and furnished, apparelled and equipped, with a full and competent crew, and an experienced and proper pilot on board, was coming up Boston harbor with all sail set, except her studding-sails and the lee clew of her mainsail, which was hauled up to enable her pilot to see well. That the wind was southwest, and the ship upon her larboard tack, running free, with her yards broad sharp. That between the hours of six and seven o'clock of the afternoon aforesaid, said ship was passing through the Narrows, between said Gallup's and Lovell's islands, along the leeward edge of the channel, between said islands, and hugging the leeward shore as close as it was possible for her to do with safety. That, while so passing, said schooner was discovered some distance ahead coming down said harbor, with a free wind, and at first appeared to be going to the windward of said ship, as she should and easily might have done with proper management and care, but that said schooner afterwards changed her course, and ran down as if going to the leeward of said ship; and when she had approached within a short distance of said ship, luffed across her bow. That said ship endeavored, by keeping off all in her power, to go clear of said schooner, but could not; and thus said ship, without any fault or negligence on her part, and in spite of every endeavor and precaution used by those in charge of her, came in contact with said schooner, and a violent collision ensued, which resulted in the mutual damage of both vessels, and in the sinking of said schooner a short time after.

Twelfth. And the respondents further say that said collision occurred upon the leeward side of the channel between said islands, and within a few feet of the shore of the leeward island, and that all possible measures and precautions were taken on the part of said ship by keeping her off and hailing, and otherwise to avoid said collision.

That said ship did not luff, as alleged by the libellants, but endeavored to keep off all she could. That said schooner might easily have avoided said ship with proper care and effort, and ought so to have done. That said schooner was carelessly, negligently and unskilfully managed and navigated. That said collision occurred entirely through the negligence and fault of the said schooner and those in charge of her, and not through any fault, carelessness or negligence of said ship, or of those in charge of her. That said ship was carefully, skilfully, and in all respects properly navigated, but that under the circumstances, and on account of the fault, negligence, carelessness and unskilfulness on the part of said schooner and those in charge of her, it was impossible for said ship to go clear of said schooner or to avoid said collision, and that said ship is in no way responsible or liable for the consequences of said collision.

Thirteenth. That by reason of said collision and through the fault and negligence of said schooner and those in charge of her, in the way and manner hereinbefore alleged, said ship "Marcellus" was greatly damaged in her hull, rigging, spars, and otherwise, to the amount of about one thousand dollars, for which the libellants are responsible, and which the respondents pray that they may be allowed and decreed in the cause.

Fourteenth. That all and singular the premises are true, in verification whereof, if denied, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, the respondents pray this honorable court that it would be pleased to pronounce against the libel aforesaid, and for the damages claimed by the respondents aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

JOHN A. BAXTER,
For Owners and Claimants of ship "Marcellus."

B. R. CURTIS,
H. A. SCUDDER,
Proctors for Respondents.

CIRCUIT COURT U. S., MASS. DISTRICT, October 31st, 1859.

Sworn to by said Baxter, before me,

H. W. FULLER,
Clerk.

TESTIMONY ON BEHALF OF LIBELLANTS.

Deposition of Benjamin Emmons,

A witness on behalf of libellants. Taken and sworn to at Boston, on the 11th day of October, A.D. 1859, before Elias Merwin, Commissioner.

1st interrogatory. What is your name, age, residence, and occupation? and how long have you followed it?

Answer. My name is Benjamin Emmons, age thirty-nine years, residence New York, and I am seaman; have been twenty-three years.

2d int. Were you on board the ship Marcellus on her late voyage? What was it? When did she arrive at Boston? What is her tonnage?

Ans. I was. Her voyage was from Boston to Melbourne, from Melbourne to Batavia, and from there to Singapore, and from Singapore to Boston. She arrived in Boston a fortnight ago to-day. Her tonnage, as near as I can judge, is fifteen or sixteen hundred tons.

3d int. Was the Marcellus in collision with any other vessel on said voyage? If yea, what vessel, when, and where?

Ans. No other time except entering the Narrows here, with the schooner Empire, at 7 o'clock in the evening. I took notice of the time — on Tuesday evening of her arrival. There was one of not much account at Singapore.

4th int. State all you know about the collision with the schooner Empire?

Ans. About quarter past six I went to the wheel. It was my wheel from six to eight. Capt. Hallet, Capt. Donald, who was a passenger, Mr. Crowell, the chief mate, and the pilot, were all on the poop. The pilot stepped to leeward, under the lee of the spanker on the starboard side, and saw a vessel under her lee. He calls out to Mr. Crowell, the mate, Go forward and see how that vessel is standing, and let us know as soon as possible. The mate went forward. The first words I heard were, "Luff, hard down, hard down, luff." The pilot says, "Hard down, luff." I then put the wheel down, or nearly so. Before I could get it hard down, the pilot said hard up, and jumped from off the top of the house and helped me put it hard up. Before she swung off any, we came in collision with the schooner. The first I see of the schooner was her jib coming across our weather bow. This was after I got the wheel hard up. Before the ship could answer her wheel, she rode right up on to the schooner, and the force with which we was going through the water drove the schooner and all right on to the lee shore.

5th int. How fast was the ship going?

Ans. Between seven or eight knots an hour; that is, eight miles an hour, as near as we could judge.

6th int. Where was the pilot when he told you to put the wheel down?

(Objected to.)

Ans. He was standing just at the leeside, at the corner of the house.

7th int. After the order was given, what did he next do?

Ans. He jumped on top of the house.

8th int. What did he do there?

Ans. He looked forward.

9th int. What did he then do?

Ans. He turned round to me and said, Hard up; and at the same time jump down, gets hold of the wheel and helps me put it hard up.

10th int. How far down did you put it when you were ordered to put it down, as you say?

Ans. Nearly hard-down.

11th int. Did it, or not, change the course of the ship?

(Objected to.)

Ans. Yes, sir; about a point and a half. That is, as nigh as I could judge by the light in range ahead of us. I took no notice by the compass.

12th int. What sail had the Marcellus? What breeze? and how long had she had it?

Ans. Had all sails on except studding-sails—royals and everything on except studding-sails. We took the breeze about three o'clock in the afternoon, and it kept increasing till evening. About southwest or southwest-by-south, as near as I could judge from the notice I took of it.

13th int. How did the ship have the wind?

Ans. She had the wind about abeam; if anything, a little forward of the beam.

14th int. From whom came the first cry you speak of, "Luff! hard-down! luff?"

Ans. The first words I heard were from the mate, Mr. Crowell.

15th int. Where was he then?

Ans. Forward, on the topgallant forecastle.

16th int. After you struck the schooner, was your wheel kept hard-up?

Ans. Yes, sir. We eased down about two spokes, because, if the wheel is kept hard up, it is apt to stick there so that you cannot move it.

17th int. Where did the ship then go? State fully in what direction.

Ans. She went right over on the lee-shore on the easterly side. The schooner was under her bow all this time, and drove her right ashore along with us.

18th int. Did you remain at the wheel, and how long?

Ans. I remained at the wheel till she came to an anchorage.

19th int. What tacks had the ship aboard?

Ans. She had her port tacks aboard; that is the wind was blowing on her port side.

20th int. How long after you heard the mate say, Luff, &c., before the collision?

Ans. As near as I can judge, it was about four minutes, as near as I can judge, of the time. I didn't take notice of the time.

21st int. How did the ship and schooner get apart? What became of the schooner?

Ans. The steamboat came alongside outside, before we came into the Narrows—the steamer Rescue—and offered to tow us in. The captain said it wouldn't pay, because we had a good leading breeze. He then kept along with us for a little while, till he found he had no answer from the captain, and went ahead. Then, after we struck, he came back again to us, and offered to clear us from the schooner—the wreck. Then the steamboat first got a line or hawser out to the schooner to pull her masts clear of us, and they found that wouldn't answer, and got a hawser out astern of the ship, and towed the ship, stern foremost, clear of the wreck of the schooner. After we got clear of the schooner, all that I could see of her was her masts and sails in the water. I couldn't see her hull.

22d int. After the collision, was any change made in the sails of the Marcellus, and when?

Ans. We hove back her main-yard, and mizzen-topsail, and then commenced taking in sail, shortening all sail. We did this immediately after the collision. When they struck, the men forward ran aft, and immediately after they began to heave back the sails.

23d int. In what part of the channel were you at the time of the collision?

Ans. Very near mid-channel, a little more to the eastward.

24th int. Was there room to have passed the schooner to leeward?

Ans. Yes, sir.

25th int. Could you see how the schooner had the wind?

Ans. No, sir. I couldn't see her from where I was.

26th int. When the mate went forward, as you state in the 4th answer, what became of Capt. Hallett?

Ans. He went off the poop, round on the port side, on to the main deck. I didn't see him after he went on to the main deck, until after the collision.

27th int. How long after you and the pilot got the wheel hard up before the ship struck the schooner?

Ans. It wasn't more than about two seconds, as near as I can guess.

28th int. Did you hear the pilot, at the time of the collision, say anything on the subject?

(Objected to.)

Ans. Yes, sir.

29th int. What did he say?

Ans. After we struck he passed between me and the binnacle, and says, it would have been better for the mate to have staid aft, where he was.

Cross-Interrogatories.

1st cross-interrogatory. State all that you recollect the pilot said to you when he jumped to the wheel to help you hard-up, or before?

Answer. When he got hold of the wheel all he said was, Hard up, hard up. The moment he jumped down he sung, Hard up. All that he said to me before was, Hard down; he then jumps to the top of the house to look for himself, and then says, Hard up.

2d cross-int. Have you not had some words or disagreement with the pilot or the mate upon this matter since the arrival of the "Marcellus?"

Ans. No, sir. I have had a few words with the pilot the other evening, but I told him it was no place for us to have any argument on a point or case like this.

3d cross-int. Have you been paid your wages for the voyage on board the Marcellus?

Ans. Yes, sir.

4th cross-int. Have you been paid all you asked?

(Objected to.)

Ans. No, sir.

5th cross-int. Why not?

(Objected to.)

Ans. Mr. Dilloway requested me to wait until he had seen Capt. Baxter and Capt. Hallett, on account of some caulking business there was done in the course of the voyage—some extra work that I did that I didn't ship for.

6th cross-int. If you have been paid your wages, how is it you have not been paid all you asked?

Ans. Because Mr. Dilloway wished to see Capt. Baker and Capt. Hallett, to argue the case with them, to see them about it.

7th cross-int. Well, what has been done about it? and why is it not settled?

Ans. Because I didn't call at Mr. Dilloway's office. I was to call there last Monday. I haven't spoken to him again on the subject.

8th cross-int. Why did you not call last Monday, as stated by you?

Ans. Because I had to attend up here to Mr. Edwards', and I thought it wasn't worth while to call there.

9th cross-int. Who first asked you to come here to testify? and when was it that you were so asked?

Ans. One of these other men, Frank, came to my boarding-house and informed me that we was wanted up to Mr. Edwards'. No, I am mistaken. I was first informed that I was wanted at the Sailors' Home, and went from there to Mr. Edwards' office. Frank was one of the crew of the Marcellus. This was a week ago to-day, I think.

10th cross-int. Had you talked with any one about this matter before that time?

Ans. No, sir. I didn't think there would be anything of it, in fact. No more than some of the boarders in our house. I was telling them how we were run down.

(Objected to by libellant, as irresponsive.)

11th cross-int. How did Frank know you was wanted?

Ans. That I couldn't say. He said some gentleman came down to his house and requested to see us the next day.

12th cross-int. And have you since been so much engaged that you could not go after the balance of wages claimed by you?

Ans. Been so much engaged that I didn't care about going for it until I see how this came out. I was so much engaged that I didn't think much more about it.

13th cross-int. Will you state how you have been engaged?

Ans. I decline answering that question.

14th cross-int. State *where* you have been engaged.

Ans. I decline answering that question, too.

15th cross-int. State with whom you have been engaged.

Ans. No one particular.

16th cross-int. Do you know where, and how, and with whom you have been engaged?

Ans. I can't answer that question.

17th cross-int. Have you not been told that you need not, or must not go for the balance of your wages asked?

Ans. No, sir.

18th cross-int. When do you intend to go for them?

Ans. That I couldn't say.

19th cross-int. When will you be able to say?

Ans. I decline answering that question.

20th cross-int. How long have you followed the sea?

Ans. Twenty-three years.

21st cross-int. In what business and in what capacity?

Ans. West India, European, Pacific, and East India voyages; before the mast and second mate.

22d cross-int. How many voyages as second mate?

Ans. It is rather difficult for me to tell. I sailed upwards of six years out of New York as second mate, in different vessels.

23d cross-int. Whether or not you consider yourself an able seaman and a good sailor?

Ans. Yes, sir.

24th cross-int. How long since you last went as second mate?

Ans. It is about four or five years ago.

25th cross-int. Have you been at sea during the most of that time?

Ans. Yes, sir.

26th cross-int. Were there many vessels about at the time of the collision?

Ans. There were several small vessels about, not in the Narrows, though, where we was.

27th cross-int. Had they lights aloft, and how many?

Ans. I did'nt see any lights aboard the small vessels.

28th cross-int. Where do you belong?

Ans. New York.

29th cross-int. Are you much acquainted with Boston harbor?

Ans. No, sir.

30th cross-int. Under whose control were you as to steering? Who gave you your orders?

Ans. The person I relieved gave me the course. The first orders I had was from the pilot.

31st cross-int. Was there not a pilot on board, and was it not his duty to direct the course?

(Objected to.)

Ans. There was a pilot on board. I couldn't say as to what his duty was.

32d cross-int. Who usually directs the course when a pilot is on board?

(Objected to.)

Ans. The pilot.

33d cross-int. How long had you been steering the same course before the order you have spoken of was given?

Ans. I decline answering that question, because I am not certain about it.

34th cross-int. Do you mean to say that you had been steering for any light, and if so, how long had you steered for it?

Ans. That I could'nt for certain say. I had not been steering for any light particular. I had no particular course at all, only as the pilot said "steady," or "keep her off a little, or luff a little."

35th cross-int. Had you been steering by any particular light?

Ans. No, sir.

36th cross-int. Did you not take your orders from the pilot?

Ans. Certainly, I did so.

37th cross-int. Had you any other duty than to steer as the pilot ordered you?

Ans. Nothing more.

38th cross-int. How long had you been at the helm, and whom did you relieve?

Ans. I relieved the boy, Alanson Crocker. I had been at the helm from quarter past six, I think it was when I took the helm.

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39th cross-int. Between what islands were you at the time of the collision?

Ans. Not being acquainted with the islands, I could'nt give their names.

40th cross-int. Was the channel or passage between them straight or crooked?

Ans. I decline answering these questions at all, as I am not acquainted with the channel, as a pilot, or those generally coming up here.

41st cross-int. Can't you tell us whether the passage between the islands was straight or crooked?

Ans. It was middling straight. I can't tell whether it was very crooked; a short distance, at any rate.

42d cross-int. Can you tell at what angle the vessels struck?

Ans. As near as I can judge in the dock, the vessels struck about so (here the witness represents an angle a little less than a right angle), the ship heading towards the stern of the schooner. The ship struck the schooner about midships. I can't tell where the ship struck the schooner. Those forward can tell.

Direct Examination Resumed.

1st direct resumed. What words had you with the pilot—when—state all about it, referred to in your cross-examination?

(Objected to.)

Answer. Before John Shay went away, he called up to my house to see me, but I was not in when he called; but meeting him shortly afterwards, he told me that the pilot wanted to see me. I asked him where he was. He said, come down Commercial street, 410, at Mr. Eatons's. We went in there, and he wasn't in. We came out again, went a little ways up the street, and then parted. I didn't call there again until the next day; called twice in the forenoon, and inquired of the man who kept the bar if Mr. Williamson, the pilot, had been there. I then went away, not finding the pilot there. The next I saw of Mr. Williams, the pilot, was on the corner of Clark and Hanover streets, in Mr. Campbell's store. I spoke to Mr. Williamson in this manner: says I, I called down to see you; I understood that you wanted to see me. We then commenced talking about this affair of running this schooner down. He said to me that the ship did not luff when I put the wheel down. I said she must have luffed, and knew that she did by the mark that I had on the land. And then I turned round and told him that this was no place for us to talk about a case of this kind. He then called me in back in the inner room, and told me that if the ship was cast he would be cast. I then bid him good evening, and came away.

2d dir. res. Was or not anything said about the owners? Can you remember?

(Objected to.)

Ans. Before I bade him good evening, he wanted me to go down and see Mr. Dilloway. I told him I would if I was dropping down that way, but I didn't think that I probably would. That is all I have to say.

3d dir. res. Can you remember whether the course of the ship changed after you took the helm till you put it hard down?

(Objected to.)

Ans. No, sir, I cannot remember whether the course was changed at all until I put the wheel down.

4th dir. res. When you got the pilot's order to put tne wheel hard down, how many times did you roll the wheel round?

(Objected to for form.)

Ans. That I couldn't say, particularly, because not taking notice how many turns I took at the wheel at the time. As near as I could tell, three or four and a half, as near as I could come to it. It might be more, or less.

5th dir. res. Have you had any conversation with the pilot since the collision? If yea, when, and what?

(Objected to.)

Ans. I have. I have given the conversation already, in a previous answer.

6th dir. res. How many times have you been in and out of the harbor of Boston?

Ans. Eight times, counting in and out both, as near as I can judge; sometimes in the night, and sometimes in the day.

Cross-Examination.

43d cross-interrogatory. Do you know how many different passages there are in and out of Boston?

Answer. No, sir.

44th cross-int. Did you ever come in or out of this passage before, to your knowledge?

Ans. Yes, sir.

45th cross-int. How long had you had the helm? Were you in the Narrows at the time you took the helm? Do you know what courses you steered before getting into the Narrows, and what courses you steered after you got into the Narrows, before the collision?

Ans. I declined answering such question, altogether. I never took particular notice.

46th cross-int. Why do you decline?

Ans. Because I didn't take notice.

47th cross-int. Do you recollect whether you changed at all during the time referred to?

Ans. Not until we had the orders, hard down. I do not recollect changing the course until then.

48th cross-int. Didn't you have to change your course to get into the Narrows?

Ans. Before we came into the Narrows we did.

49th cross-int. And didn't you have the helm then?

Ans. No, sir. I took the helm before we came into the Narrows.

Direct Examination.

7th direct resumed. Do you say, in answer to the 10th cross-interrogatory, that you said the ship was run down?

Ans. No, sir; that the ship was not run down. The ship run the schooner down.

BENJAMIN EMMONS.

Deposition of Frank Johnson,

Taken and sworn to at Boston, in the District of Massachusetts, on the twelfth day of October, A.D. 1859, before Elias Merwin, Esq., Commissioner.

1st interrogatory. Please state your name, age, residence, and occupation?

Answer. My name is Frank Johnson; age, twenty-four years; residence, Hamburgh; I am a sailor, and have been eight years.

2d int. Were you on board the ship Marcellus on her late voyage? in what capacity? when did she arrive?

Ans. I shipped on board the Marcellus, at Melbourne, as able seaman. She arrived in Boston the 27th September.

3d int. Do you know of a collision between the Marcellus and schooner Empire?

Ans. Yes, sir.

4th int. When was it?

Ans. It was in the evening, about seven o'clock; the evening of our arrival.

5th int. Where were you at the time? what did you see? State fully?

Ans. I stood on the forecastle; the first thing I saw was the mate come jumping forward; he came up on the forecastle, sung out to the schooner to luff. The master of the schooner sung out to our mate, I can't luff. Our mate hallooed again, you must luff, heave her hard down. We luffed at the same time, they made a mistake, the pilot ordered our wheel down. We luffed about a point and a half. The schooner said that we was coming into them then, he hove his wheel hard down then, and as he saw we was coming into him, he did his best to get clear of us. The schooner didn't get time to come up in the wind, we were going so fast. At the time the schooner was luffing up into the wind, we came into him. After we stove him, the mate then hallooed out for the steamer, the tow-boat. Captain

Hallett said, never mind, don't halloo to the tow-boat. The tow-boat heard and came alongside, the first time he sung out. When we struck the schooner, he went through his foresail with our jib-boom, and his foremast went over our cat-head, and his fore rigging over our anchor stock. His other mast was standing up until we got clear of the schooner, and then it dropped down.

6th int. What did you do to your sails after you struck the schooner, and how soon?

Ans. We let go the lee braces and hauled in the weather ones, backed the yards, main and mizzen. So soon as we struck, we run to the braces.

7th int. Did that back her off the schooner?

Ans. No, sir.

8th int. Where did the ship and schooner then go to?

Ans. The ship and schooner drifted in to the lee shore.

9th int. How did you get clear of the schooner?

Ans. The steamer came alongside us and we gave her our hawser. She tried to pull us clear of the schooner. We took the schooner along with us. We got a rope's end round the schooner's fore mast then, and let the steamer go ahead. The steamer hauled his foremast out of our cat-head. We cut away the rest of his rigging from our anchor stock, then the steamer came alongside again; the steamer backed, and took us clear of the schooner. The steamer went ahead of us. The schooner was nearly sunk altogether, when the ship left her.

10th int. What part of the channel were you in when you struck the schooner?

Ans. About middle in the channel; a little more on the lee shore side.

11th int. How far did they drift towards the lee shore? Where did the schooner sink?

Ans. We drifted some, but it wasn't a great deal. The schooner's stern, where she sunk, was not more than a short ship's length from the shore.

12th int. How did the schooner have the wind when you first saw her?

Ans. She was coming out close on the wind.

13th int. What direction was she then from the ship?

Ans. She was half a point off from our lee bow.

14th int. How long did the ship keep headway on after she struck the schooner?

Ans. About two minutes.

15th int. (Not put.)

16th int. How did she strike the schooner?

Ans. Just abaft the fore mast.

17th int. How heading on to the schooner?

Ans. Right head on. The schooner was luffing up into the wind.

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18th int. How was the tide?

Ans. It was flood tide; setting up.

19th int. What sail had the Marcellus?

Ans. She had everything on but the studding sails.

20th int. How had the Marcellus the wind?

Ans. Three points free.

21st int. Could you see the schooner's helm?

Ans. No, sir.

22d int. How do you say, then, that she was luffing?

(Objected to.)

Ans. The schooner was coming up in the wind. I judged by the sails, and our head too.

23d int. How much did the Marcellus luff at this time?

(Objected to, for form.)

Ans. A point and a half.

24th int. Had you seen the schooner before the mate came forward, as you have stated?

Ans. No, sir.

25th int. Had any one, to your knowledge?

Ans. Not that I know of.

26th int. Where were you standing when the mate came jumping forward as you state, and who was with you?

Ans. We were standing, the whole ship's company, on the forecastle deck.

27th int. How much did the Marcellus luff after the mate called out as you have stated, and before the collision?

(Objected to, for form.)

Ans. A point and a half.

28th int. How do you know how much she luffed?

Ans. By the land ahead of the schooner.

29th int. After the ship struck the schooner, which way did they go, so long as they had headway?

Ans. They set right in on the lee shore. We took the schooner along with us.

30th int. When the steamer came what did she first do?

Ans. She came alongside and tried to take us clear of the schooner, to back us off from the schooner.

31st int. What did that do.

Ans. We took the schooner along with us.

32d int. Which way?

Ans. Took us in shore; the lee shore.

33d int. Was there room for the ship to have passed the schooner to leeward before the collision?

(Objected to, for form.)

Ans. Yes, sir; I thought there was room enough.

34th int. Would the ship have passed the schooner, if the ship had not luffed?

(Objected to for form, after answer.)

Ans. Yes, sir.

35th int. What did you and the crew on the forecastle do when she struck? Did the mate give you any order?

Ans. We were doing nothing. The mate gave the order, after they cried out to luff, to clear off the forecastle.

36th int. Did you all stand on the forecastle when the ship struck? What did you do?

Ans. No, sir. The mate gave order to clear off the forecastle. We jumped all down, and run aft.

37th int. Did you hear the captain say anything, after you struck the schooner, to the mate or any one? If so, what was it?

Ans. After we struck, the captain came forward and said, "Mr. Crowell, you bothered the pilot."

38th int. Who was Mr. Crowell?

Ans. The chief mate.

39th int. Was he (Mr. Crowell) the one who came forward and sung out to luff, as you have stated?

Ans. Yes, sir.

40th int. Had the schooner sunk when the ship left her?

Ans. Her upper rail was a foot above water.

41st int. How fast was the Marcellus sailing?

Ans. About eight knots.

42d int. Have you steered the Marcellus on this voyage, and how often?

Ans. I steered her seven months and a half, about two hours out of every twenty-four hours.

43d int. How was she as to minding her wheel?

Ans. She was a good steering ship.

44th int. How did the Marcellus have the wind for steering that night?

Ans. The best chance she could have.

45th int. How little of a turn of the wheel would she mind, as the wind and water then were?

Ans. Three spokes.

46th int. How many spokes were there in her wheel?

Ans. Eight, sir.

47th int. What land ahead of the schooner do you refer to in the 28th answer?

Ans. I couldn't tell which land.

48th int. In what direction was it?

Ans. On our weather bow, ahead of us at the same time.

9th int. Was it the lee shore?

Ans. No, sir; the weather shore.

50th int. Was it light at the time when they came together?

Ans. It wasn't very dark. It was about quarter to seven. It was a fine evening.

51st int. Had the ship any light up?

Ans. No, sir.

52d int. When you first saw the schooner did you think there was any danger of their coming together?

Ans. No, sir.

53d int. Where did you first think they would come together?

Ans. When our ship began to luff.

54th int. How was the wind?

Ans. Southwest by south.

55th int. Did you look at the compass near the time of striking? if so, when?

Ans. Yes, sir; about a quarter of an hour after we struck.

56th int. Could you see the man steering the schooner as they came together?

Ans. No, sir.

57th int. How long after you struck the schooner before you got clear and left?

Ans. I didn't take particular notice, but guess it was about two hours.

58th int. Did you hear the mate hail the steamer after the ship struck the schooner?

Ans. Yes, sir.

59th int. What did the mate say?

(Objected to.)

Ans. Steamer ahoy.

60th int. Did you hear the captain say anything at this time to the mate, or any one? if yea, what was it?

(Objected to.)

Ans. The captain came forward and said, don't halloo to him, that they go up and report anything to-night.

61st int. Did the Marcellus, at the time she approached the schooner, luff? if so, how much?

Ans. A point and a half, about.

Cross-interrogatories.

1st cross-interrogatory. Where were you born, and how long have you been a sailor?

Ans. In Altona, Denmark. I have been a sailor five years.

2d cross-int. Do you speak English well?

Ans. No, I can't speak English very well; I can understand most of it.

3d cross-int. Do you understand all you hear spoken in English?

Ans. Yes, sir.

4th cross-int. Have you understood every question put to you while your deposition has been taken, without explanation?

Ans. Yes, sir.

5th cross-int. State, in your own words, the question just put to you?

Ans. You asked me if I understood everything that had been said since we commenced here.

6th cross-int. Have, or not, the questions put to you been explained to you from time to time?

Ans. I do not understand quite the meaning of that.

7th cross-int. Who first asked you to come here and testify?

Ans. The master of the Sailors' Home sent for us down to our house.

8th cross-int. Did you go and get Benjamin Emmons to come and testify?

Ans. Yes; I went down to tell him that the master of the Sailors' Home wanted to see us.

9th cross-int. Did you have any trouble on your last voyage about food or rations, or anything else?

Ans. No sir.

10th cross-int. Have you not said that the food was not good or something like that?

Ans. No sir.

11th cross-int. How was it, good or bad?

Ans. We couldn't find any fault with the kind of food we had.

12th cross-int. What was you on board the Marcellus?

Ans. Able seaman.

13th cross-int. When you first saw the schooner, how far was she from you, and where were you standing?

Ans. She was four ships' length from us. I was standing on the forecastle head.

14th cross-int. How long after you first saw the schooner was it that the mate hailed her to luff?

Ans. The mate came running forward and as soon as he got on the forecastle head, he gave the order to luff. I didn't see the schooner till I turned round and saw the mate, and he hailed her to luff.

15th cross-int. How long after the mate hailed was it that you left the forecastle?

Ans. It was about seven minutes.

16th cross-int. Did you not leave the forecastle before the vessels came together?

Ans. Yes; the mate told us to clear off the forecastle when our ship was luffing.

17th cross-int. How long before?

Ans. We jumped right down, and when abaft the galley they struck together.

18th cross-int. How long was it after the mate hailed the schooner to luff that he told you to get off the forecastle?

Ans. I couldn't tell that; I didn't take no notice of the time.

19th cross-int. Was it before or after?

Ans. After he hailed the schooner.

20th cross-int. How long after?

Ans. It was within a short time.

21st cross-int. How long before the vessels came together was it that he told you to get off the forecastle?

Ans. It couldn't be two minutes. I hardly think it was two minutes.

22d cross-int. How long after you saw the schooner was it that the vessels came together?

Ans. I couldn't answer that; I took no notice of the time; I didn't look at no time; I think it was about between eight and nine minutes.

23d cross-int. How fast was the schooner going?

Ans. Headway was nearly out of the schooner when we struck him.

24th cross-int. How long before the collision had you been at the compass?

Ans. An hour before she struck.

25th cross-int. Were you the man who was relieved by Emmons?

Ans. No, sir.

26th cross-int. Had the schooner any light up before the collision?

Ans. No, sir.

27th cross-int. When you first saw the schooner, which side of you did you think she was going?

Ans. I thought she was going to windward of us.

28th cross-int. How did she bear at that time?

Ans. I don't know; I didn't look at the compass.

29th cross-int. If you saw her, do you not know whether she was right ahead, or on the weather or lee bow?

Ans. She was half a point on our lee bow.

30th cross-int. How came you at the compass after the collision?

Ans. We were hauling taut the weather braces.

31st cross-int. And were you looking at the compass at the same time?

Ans. No; after we got through with the weather braces I looked at the compass.

FRANK JOHNSON.

Deposition of Ludwig Schreuder,

Taken and sworn to at Boston, in the District of Massachusetts, on the thirteenth day of October, A.D. 1859, before Elias Merwin, Esquire, commissioner.

1st interrogatory. Please state your name, age, residence, and occupation.

Answer. My name is Ludwig Schreuder; age, twenty-one years;

I live sixty miles from Hamburgh. You must excuse me,—I cannot speak very plain English. I am a sailor, and have been seven years.

2d int. Were you on board the ship Marcellus on her late voyage? What were you! When did she arrive?

Ans. Yes, sir. As able seaman. She arrived the 27th September, on Tuesday night.

3d int. Do you know of a collision between the Marcellus and schooner Empire?

Ans. Yes, sir.

4th int. When was it? State all you know about it.

Ans. It was the 27th of September. I had the wheel from four to six, and then I got relieved from that boy Alanson Crocker. Then he was about three minutes there, when the pilot sung out to send another man at the wheel, and then at the same time I went down in the forecastle for my supper. I was about half an hour there, and then lighted my pipe and went on to the forecastle head. Then a steamer came alongside. What he said I couldn't tell; and then I went and look right ahead at the schooner; she was on our lee bow, and I didn't take notice about that we should touch her then. Then the mate came forward; then sung out aboard the schooner to luff. Then somebody sung out from the schooner three times "I can't luff." Then the mate sung out, heave the wheel down. Then at same time to them aboard the schooner to heave his wheel down. Then I was looking right ahead by the land, and could see that our ship was luffing, was going up to windward. It was about a point and a half that she went up. Then the first thing we knew, our flying jib boom went through her mainsail. Oh, I forgot, the mate told us first to run aft. Before I went aft and slewed round forward, then we had struck the schooner already, and then the mate and me went forward on the forecastle head. Then the mate looked over the bow aboard the schooner, and sung out, if they was all alive; and then somebody said yes, aboard the schooner. At the same time the pilot sung out to brace the main and mizzen yards into the wind. And then I could see that our ship and the schooner drifted at the same time on the lee shore. Then the pilot gives the orders to take hawser out of the forward port hawser pipe, and take the end of it aft; and then we gave the end of the hawser aboard the steamer, and then the steamer try to get us clear from the schooner; but the same time we took the schooner along with us, and came close on the lee shore. Then the captain aboard the steamer, he told that we must try another thing, that we wouldn't get clear that way. Then the mate sung out for hatchets to cut off his rigging from our cat-head. We cut what we could cut, and left the chains there on the cat-head. Then the mate give the orders to get a new main sheet on deck, and I made the end of it fast around the schooner's fore mast, and another end aboard the steamer. At the same time the steamer hauled all these things off our cat-head, and

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we got clear of the schooner. Then the steamer came alongside again, and we took the end of the new hawser, and went with us up to Boston.

5th int. What part of the channel were you in when you struck the schooner?

Ans. We was about middling. I could say a little more on the lee shore.

6th int. How did the schooner have the wind when you first saw her?

Ans. I couldn't say how she had the wind. She was full and by, and close on the wind.

7th int. How long did the ship keep headway on, after she struck the schooner?

Ans. About a minute.

8th int. How did she strike the schooner?

Ans. A little abaft the foremast.

9th int. How, heading on to the schooner?

Ans. She headed more to her stern than to her bow.

10th int. How was the schooner from the ship, when you first saw her?

Ans. She was about half a point on the lee bow.

11th int. How was the tide?

Ans. It was flood tide.

12th int. What sail had the Marcellus on?

Ans. Every sail, without studding sails.

13th int. How had the Marcellus the wind?

Ans. About a point abaft the weather beam.

14th int. What direction was the wind?

Ans. About southwest by south, south-southwest.

15th int. How long before the ship struck, had you seen the compass?

Ans. I couldn't tell you. I saw it last when that boy relieved me from the wheel.

16th int. What land ahead was you looking by, when you say the ship was luffing?

Ans. Land on the weather bow.

17th int. Where were you when you saw the schooner first? and did you remain there till you run aft, as you have stated?

Ans. I was on the forecastle head, and remained there till I run aft.

18th int. Was there room for the ship to have passed the schooner to leeward?

Ans. Yes, sir.

19th int. Would the ship have passed the schooner, if the ship had not luffed, as you have stated?

Ans. Yes, she could have passed her, without going from her course.

20th int. On which side?

Ans. On her lee side.

21st int. How far aft did you go when you left the forecastle, as the ship struck the schooner?

Ans. To the main mast.

22d int. Did you hear the captain say anything, after the ship struck the schooner, to the mate, or any one? If so, when and what was it?

Ans. When we struck the schooner, the mate went on to the forecastle, and the master went after him, and called him, "you bothered the pilot." This was after we struck the schooner, and had gone aft and came from aft forward again.

23d int. What was the mate's name? Was he the one who had come forward and sung out to luff, as you have stated?

Ans. Mr. Crowell. He was the same.

24th int. How fast was the Marcellus sailing?

Ans. About eight knots.

25th int. Have you steered the Marcellus on this voyage? and how often?

Ans. Yes, sir. Every second watch two hours.

26th int. How was she as to minding her wheel?

Ans. She minded her wheel with three spools.

27th int. How did the Marcellus at that time have the wind for steering?

Ans. She had the wind a point abaft the weather beam. It was the best wind for her to steer.

28th int. After the ship struck the schooner, which way did they go, so long as they had headway?

Ans. When she struck the schooner, she went a very little off. I could see a very little on the lee shore.

29th int. Did the schooner go with her?

Ans. Yes, sir.

30th int. Was it light at the time they came together?

Ans. Yes, sir; it was just beginning to get dark.

31st int. Had the ship any light?

Ans. No, sir; nor the schooner.

32d int. When you first saw the schooner, did you think there was any danger of a collision?

Ans. No, sir.

33d int. When did you think they would come together?

Ans. Not before our ship was luffing.

34th int. How long after the ship struck the schooner, before he got clear and left for Boston?

Ans. About two hours.

35th int. Could you see the helm, or the man steering the schooner?

Ans. No, sir.

36th int. What did trimming the main and mizzen yards into the wind do?

Ans. It backed the yards so that the wind came in forward of the sails.

37th int. How may spokes in the wheel of the Marcellus?

Ans. Eight, sir.

38th int. Do you know if any other of the men beside you, had seen the schooner before the mate came forward?

(Objected to.)

Ans. I was talking about it with an old fellow here, who has gone away now. Whether any other of the men saw it, I don't know. The old man's name was Shay, I believe.

39th int. Had the attention of any of the officers been called to the schooner, to your knowledge, before the mate came forward?

Ans. No, sir.

Cross-interrogatories.

1st cross-interrogatory. Do you know what the word collision means?

Ans. No, sir.

2d cross-int. How long before the vessels came together, had you seen the schooner at all?

Ans. About ten minutes.

3d cross-int. How far off was she, when you first saw her?

Ans. Four ships' length.

4th cross-int. How did she then bear from you?

Ans. She was half a point on our lee bow.

5th cross-int. How soon after you saw her did the mate come forward, and where were you standing then?

Ans. About two minutes. I was standing on the forecastle head, where I was standing before.

6th cross-int. How soon after the mate came forward did he tell you to clear the forecastle deck?

Ans. It was about three minutes before he told us to go aft.

7th cross-int. Did you go aft when the mate ordered you?

Ans. Yes, sir.

8th cross-int. How long after you started to go aft did the vessels come together?

Ans. Before I went aft and slewed round, they had struck already.

9th cross-int. How far aft had you got when they came together?

Ans. To the main mast.

10th cross-int. How far did you go?

Ans. A little abaft the main mast.

11th cross-int. How fast was the schooner going before you struck?

Ans. About three miles.

12th cross-int. How long before the collision, had you had the wind one point abaft the beam, as stated by you?

Ans. About half an hour.

13th cross-int. And did it so continue to the time of the collision?

Ans. Yes, sir.

14th cross-int. Was there any change of wind during that time?

Ans. No, sir; I don't know.

15th cross-int. Was the wind blowing fresh, or how?

Ans. There was a little, nice breeze.

16th cross-int. How many times have you been in and out of Boston harbor?

Ans. Once in. Never before this time.

Direct Examination Resumed.

1st direct resumed. When you were asked if there was a collision between the ship and schooner, what did you think you were asked about?

Ans. How far we was off from the schooner. I don't know, sir.

2d dir. res. Did you, or not, in your answer to the 3d question, mean to say that the ship and schooner came together?

(Objected to, for form.)

Ans. Yes, sir.

3d dir. res. When you were afterwards asked about the collision, did you or not understand it referred to this coming together?

(Objected to.)

Ans. No, sir. I believe I now see what you mean; it is, if I saw when we got afoul of the schooner.

LUDWIG SCHREUDER.

Deposition of Samuel J. Walker,

Taken and sworn to at Boston, in the District of Massachusetts, on the fourteenth day of October, A.D. 1859, before Elias Merwin, Esq., commissioner.

1st interrogatory. What is your name, age, residence and occupation?

Answer. My name is Samuel J. Walker; age twenty-one years; residence Barnstable, and am a seaman.

2d int. Were you on board the schooner Empire when she last left Boston, and in what capacity? What day was it?

Ans. I was, as mate. It was Tuesday, the 27th September.

3d int. State all that happened after you passed Nix's Mate?

Ans. After passing Nix's Mate, we luffed our vessel to, and hauled the sheets aft; then kept her off close on the wind. A few minutes after that time, we saw a vessel coming. The captain says to me that he thinks there's a ship coming. I says, I think there's a steamship coming; I hear the sound of steam. She got along a little further, and she proved to be a steamboat, one of them. The captain thought that the ship was attached to the steamboat. The captain says to me, keep her as nigh as she'll go. I kept her up as nigh as she'd go. I had the helm. We see the ship coming right for us that time. When she was within about four ships' length, they sung out from aboard the ship, "luff aboard the schooner." The captain says, I can't luff; I'm close to the wind. The man aboard the ship says, You must luff. We see that after the mate sung out to us to luff, that the ship luffed, too. Two, three minutes after that time, she struck us.

(Objected to.)

4th int. How much did the ship luff?

Ans. I judge she luffed a point and a half.

5th int. What happened after she struck you?

Ans. She took our mast out, broke our foremast in three pieces, carrying us through the water about two minutes; broke the bowsprit off, a little of it. She struck us just abaft the beam. The ship was heading on to our quarter.

6th int. Did the ship continue luffing till she struck you?

(Objected to.)

Ans. Yes, sir.

7th int. Where were you in the channel at the time of the collision?

Ans. On the western edge of the channel, on the weather side of the channel.

8th int. How many times have you been in and out of Boston harbor, and how long at sea?

Ans. About fifty times. I have been at sea eight years.

9th int. Do you know where the deepest water in the Narrows is? Where is it.

Ans. On the eastern shore side, nighest to the eastern shore.

10th int. How far ahead of the ship was the steamer?

Ans. About a quarter of a mile.

11th int. Which side of the schooner did she pass?

Ans. To leeward.

12th int. Was there any hail from the steamer as she passed you?

Ans. No, sir.

13th int. How was the schooner, after the steamer passed her, as to her course?

Ans. Close on the wind.

14th int. Did she or not make to windward after passing the steamer and before she met the ship?

Ans. Yes, sir.

15th int. Which way was the wind?

Ans. Southwest by south.

16th int. Was there room for the ship to have passed the schooner to leeward?

Ans. Yes, sir.

17th int. When you first saw the ship, did you see any danger of their coming together?

Ans. No, sir.

18th int. Where did you first see any danger of their coming together?

Ans. When she altered her course and began to luff.

19th int. How was the schooner from the time she passed Nix's Mate, till the collision, as to the wind?

Ans. Close by the wind.

20th int. Did the ship do any, and what damage, to the hull of the schooner?

Ans. She stove her side in, and started the butts and treenails on the other side.

21st int. When the hail to the schooner, from the ship, to luff came, could the schooner then luff?

Ans. No, sir.

22d int. Why not?

Ans. Because she was close to the wind.

23d int. How was it as to the light? What was the evening?

Ans. It was clear weather at the edge of dusk.

24th int. Would the ship have passed the schooner without touching her, if the ship had not luffed, as you stated?

Ans. Yes, sir.

Cross-interrogatories.

1st cross-interrogatory. How old are you?

Answer. Twenty-one.

2d cross-int. How many years at sea?

Ans. Eight years.

3d cross-int. Summer and winter? or how many months in the year; in what business?

Ans. About eight months; not a great deal winters; coasting.

4th cross-int. Between what ports?

Ans. Albany, Boston, New York, and Philadelphia.

5th cross-int. How long have you been mate?

Ans. Two months.

6th cross-int. Were you the first officer of the schooner?

Ans. Yes, sir.

7th cross-int. What was your last year?

Ans. Before the mast.

8th cross-int. How many years have you been before the mast?

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Ans. Seven.

9th cross-int. How many years cook?

Ans. Ten.

10th cross-int. How old were you when you first went before the mast?

Ans. Eleven years old; *twelve* years old.

11th cross-int. Were you ever able seaman?

Ans. Yes, sir.

12th cross-int. When?

Ans. The last three years.

13th cross-int. Can you say your compass?

Ans. Yes, sir.

14th cross-int. Try it.

Ans. East, east-by-north, east-northeast, northeast-by-north, northeast; northeast-by-north, north-northeast, northeast-by-east, north, north-by-west, north-northwest (the balance stated correctly).

15th cross-int. How large was the schooner?

Ans. If I am not mistaken, her tonnage is one hundred and thirty tons.

16th cross-int. How many men all told?

Ans. Four men and a boy, including the master.

17th cross-int. What wages had you?

Ans. Twenty dollars a month.

18th cross-int. When you rounded Nix's Mate, how near the shore did you go?

Ans. As nigh as the wind would let us. At Nix's Mate, about three schooner's length from the shore. And after getting up where the steamboat was, we were within one schooner and a half's length from the windward shore, Gallup's island.

19th cross-int. Did your vessel change her course after you rounded Nix's Mate?

Ans. No, sir.

20th cross-int. What was her course, if you know?

Ans. South-southwest.

21st cross-int. All the while? Did you fix it by compass?

Ans. That was her course all the while after we got her sheets aft. We steered by the wind.

22d cross-int. How long after you rounded Nix's Mate did you get your sheets aft?

Ans. Soon as we got round.

23d cross-int. How far from the windward land were you then?

Ans. About three schooner's length.

24th cross-int. When you first saw the Marcellus, how far off was she?

Ans. When we first saw her to note the ship clear of the steamboat, she was about a quarter of a mile.

25th cross-int. How did she bear from you?

Ans. About abeam—nearly abeam—heading right for us.

26th cross-int. Was she to the windward, or leeward, and how much?

Ans. She was to the leeward when we made her, a point and a half off our lee bow.

27th cross-int. Was she at any time, after you saw her, to the windward of you, and how much?

Ans. No, sir.

28th cross-int. How did she bear from you when she was four ship's length off?

Ans. About abeam.

29th cross-int. To the windward or leeward, and how much?

Ans. To the leeward, coming right towards, about abeam; four points to the leeward.

30th cross-int. Who saw her first?

Ans. The captain.

31st cross-int. When he first saw her what did he say?

Ans. He said there was a ship coming,—keep her up—there's a ship coming.

32d cross-int. How far off was she then?

Ans. About half a mile.

33d cross-int. State what passed between your vessel and the steamer, as she went by you.

Ans. Nothing.

34th cross-int. Were no words spoken to any one on board your vessel?

Ans. No, sir.

35th cross-int. Will you swear to this?

Ans. Yes, sir.

36th cross-int. Are you as sure of it as of anything else you have stated?

Ans. Yes, sir.

37th cross-int. Might not words have passed and you not hear them?

Ans. I think not.

38th cross-int. Why not?

Ans. Because I was in a position to hear any words spoken loud enough for any one to hear.

39th cross-int. Who was on your deck between Nix's Mate and the collision?

Ans. All hands, the captain, cook, two foremast hands, and me.

40th cross-int. Where were they?

Ans. They were forward, to leeward.

41st cross-int. With whom did you, or have you, talked about the ship's luffing?

Ans. On board the vessel, with no one.

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42d cross-int. Has not the matter been spoken of to you, or by you, to any one on board the vessel at the time?

Ans. No, sir, not of her luffing.

43d cross-int. Has not the matter been talked about to you by any one who was on board your vessel?

Ans. No, sir.

44th cross-int. Who first told you the ship luffed?

Ans. [I see it myself.] No one told me the ship luffed.

(The clause in brackets objected to as not responsive.)

45th cross-int. When did you first tell that the ship luffed?

Ans. To you.

46 cross-int. How did you steer before, and while, and after the steamer passed you?

Ans. Close by the wind, the same as before—south-southwest, all the time.

47th cross-int. Did you not change your course at all?

Ans. No, sir, we couldn't change it.

48th cross-int. Will you swear to this?

Ans. Yes, sir.

49th cross-int. How long after you rounded Nix's Mate was it that you met the steamer?

Ans. About eight—five—about eight minutes.

50th cross-int. How fast was the schooner going from Nix's Mate to the place of collision?

Ans. About three knot.

51st cross-int. What was the reason you did not luff and go to the windward of the ship?

Ans. We were close by the wind.

52d cross-int. Was that the only reason?

Ans. When we first see the ship we didn't think there was any danger of her coming into us. The only reason for not luffing was that we were close by the wind.

53d cross-int. Will you swear to this?

Ans. Yes, sir.

54th cross-int. How was your schooner heading at the time of the collision?

Ans. About south-southeast.

55th cross-int. How near the wind did she sail?

Ans. Within five points.

Direct examination.

1st direct resumed. Hear your recorded answer to 20th cross-interrogatory read and see if it is right.

(Objected to, after answer.)

Ans. Her course was south-southeast, the course I gave, I believed.

2d dir. res. Hear your recorded answer to 46th cross-interrogatory and state if it is right.

(Objected to.)

Ans. It is not right. We were steering south-southeast. I had the helm all the time to the collision.

3d dir. res. What do you mean in your answer to the last cross-interrogatory, by "within five points"?

Ans. I mean she would go at five points of the wind.

SAMUEL J. WALKER.

Deposition of Silas Pells.

Taken before Wm. S. Dexter, Esq., commissioner, at Boston, on the 24th day of October, A. D. 1859.

1st interrogatory. State your name, age, residence, occupation, and how long you have followed the same.

Answer. My name is Silas Pells; age, twenty-one; residence, Marshpee; I follow the seas, and have done so about eight years.

2d int. Were you on board the schooner Empire when she last left Boston? If yea, in what capacity?

Ans. I was, as seaman.

3d int. Do you know of any collision between her and any other vessel? If yea, what vessel?

Ans. I do. The ship Marcellus.

4th int. When and where was it?

Ans. It was on a Tuesday evening, in September last. I do not recollect the date. It was in the Narrows, in Boston harbor.

5th int. State what was done on board the schooner, after passing Nix's Mate.

Ans. After we got past Nix's Mate we hauled the sheets aft, and put the schooner on the wind.

6th int. How long did she keep so?

Ans. She kept so until the time of the collision.

7th int. How close on the wind?

Ans. As close as she could go, full and by.

8th int. How near to the buoy on Nix's Mate did the schooner go, when she rounded it?

Ans. Within about the schooner's length.

9th int. After passing Nix's Mate, and until the collision, how fast did the schooner go?

Ans. From three to four knots, I should think.

10th int. After passing Nix's Mate, and getting into the Narrows, which shore was the schooner nearest to?

Ans. To the weather shore.

11th int. After passing Nix's Mate, what did you first meet?

Ans. A steam tow-boat.

11th int. On which side of the schooner did she pass?

Ans. On the lee side.

13th int. Did she hail the schooner?

Ans. No.

14th int. What did you next meet?

Ans. The ship Marcellus.

15th int. How far off was the Marcellus when you first made her sail?

Ans. About half a mile, I should think.

16th int. How long was it after the tow-boat passed you, before the collision?

Ans. Some minutes. I couldn't tell exactly.

17th int. Which way was the schooner making after the tow-boat passed her, and until the collision?

Ans. To windward.

18th int. Describe the collision.

Ans. When we got within four hundred yards of her, we saw that she was coming towards us. We were heading up to the weather of her. When we got within hail of her, Captain Hutchins hailed her and told her to keep off. Right after that the order was given on board the ship to luff aboard the schooner. Right after that the ship commenced to luff, and luffed so that she came into us, and struck us about midships, and carried away our spars. She carried away our fore mast and main mast, and stove our hull, so that she sunk.

18th int. How could you tell that the ship luffed?

Ans. Because I went from forward, amidships, so that I could see her bows, and could tell whether she slewed either way.

20th int. How did the ship come on to the schooner? in what direction?

Ans. About quartering, with her bow towards the schooner's stern.

21st int. When you saw the ship, as you say, about four hundred yards off, did you see any danger of a collision?

Ans. No, sir.

22d int. When did you first see any danger of a collision?

Ans. When I first saw the ship begin to luff.

23d int. Where were you on the schooner, after passing Nix's Mate, until the collision?

Ans. After we passed Nix's Mate, I was forward on deck, until the ship got within hail. Then I came amidships, and staid there until I saw that the ship was luffing; then I ran aft.

24th int. Where in the channel was the schooner at the time of the collision?

Ans. Two-thirds of the channel was to leeward of us.

25th int. Was there room for the ship to have passed to leeward of the schooner?

Ans. Yes, there was.

26th int. If the ship had not luffed, would she have gone clear of the schooner?

Ans. Yes, I think she would.

27th int. Where did the schooner and ship go to after the collision?

Ans. They paid off and drifted on to the lee side of the channel.

28th int. At the time when the ship hailed the schooner to luff, could the schooner luff?

Ans. No; she was close on the wind then.

Cross-interrogatories and answers thereto.

1st cross-interrogatory. Of what race or tribe are you?

Answer. I am descended from the Marshpee tribe of Indians.

2d cross-int. Are you an Indian? If not, of what race are you?

Ans. I am of the Indian race. Not pure blood; mixed with African.

3d cross-int. How much have you been to sea? In what business, in what vessels, and with whom?

Ans. Some in the winter; not all the winters. I have been coasting and fishing in fore-and-aft schooners. I have been from Hyannis and Cotuit Port.

4th cross-int. What was the length of the schooner Empire?

Ans. I cannot say. I don't know.

5th cross-int. How long had you been in her?

Ans. Not quite a fortnight.

6th cross-int. Where did you ship, and what were you on board?

Ans. I shipped at Cotuit Port, as seaman and hand.

7th cross-int. How do you know the steam-tug did not hail the schooner?

Ans. Because I should have heard her if she had. I was on deck.

8th cross-int. Will you swear that she did not hail her?

Ans. Yes, sir. I know she didn't.

9th cross-int. How many men had you on board, all told?

Ans. Five.

10th cross-int. How many colored, and how many white?

Ans. Two colored and three white.

(Signed) SILAS PELLS.

Deposition of Thomas Mye.

Taken before Wm. S. Dexter, Esq., commissioner, at Boston, on the twenty-fourth day of October, A.D. 1859.

1st interrogatory. State your name, age, residence, occupation, and how long you have followed the same?

Answer. My name is Thomas Mye; age, thirty; residence, Marshpee. I generally follow the sea, and have done so fifteen years.

2d int. Were you on board the schooner Empire when she last left Boston? If so, in what capacity?

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Ans. I was. As seaman.

3d int. Do you know of any collision between her and any other vessel? If yea, what vessel, when, and where?

Ans. I do; the ship Marcellus. It was in September last. I don't know the date. It was in the Narrows, going out of Boston. I think it was on a Tuesday, about 7 o'clock in the evening.

4th int. State what you did on board the schooner after passing Nix's Mate?

Ans. We hauled the schooner by the wind, trimmed aft the sheets, and stood along, full and by.

5th int. How long did you stand along full and by?

Ans. Until the collision.

6th int. How fast did the schooner go after passing Nix's Mate, until the collision?

Ans. About three or four knots, I should think.

7th int. After passing Nix's Mate and getting into the Narrows, which shore was the schooner nearest to?

Ans. The weather shore.

8th int. After passing Nix's Mate, what did you first meet?

Ans. A tow-boat.

9th int. On which side did she pass the schooner?

Ans. To leeward.

10th int. Was there any hail from her?

Ans. No.

11th int. What did you next meet?

Ans. The ship Marcellus.

12th int. How far off was the Marcellus when you first made her sail?

Ans. I should think she was half or three-quarters of a mile off.

13th int. How long was it after the tow-boat passed before the collision?

Ans. I should think it was a minute or a couple of minutes.

14th int. Which way was the schooner making at the time of the collision?

Ans. To windward.

15th int. Describe the collision?

Ans. After passing the tow boat, we saw this ship coming up the channel. The schooner was standing along on the wind, full and by, heading across the ship's bow, to windward of her bow. She stood that way until the ship got within hailing distance. Then Captain Hutchins hailed the ship to keep away. The reply from the ship was, "Luff on board the schooner." It appeared to me that the ship luffed, instead of keeping away. It appeared so to me by the movement of the schooner by the ship. She was coming right for us until the collision. After it, we drifted on to the lee shore of the channel. The ship struck us quartering, with her head towards our bow, just abaft the fore rigging.

16th int. When you first saw the ship, after you had passed the tow boat, did you see any danger of collision ?

Ans. I did not.

17th int. When did you first think that the ship would strike the schooner ?

Ans. Not until I saw that she had got so near that she couldn't keep off without hitting.

18th int. When you first saw the ship, after the tow boat had passed you, which had the weather guage ?

Ans. The schooner.

19th int. Where were you in the channel at the time of the collision ?

Ans. About two-thirds of the way across to windward.

20th int. Was there room for the ship to have passed you to leeward ?

(Objected to.)

Ans. There was.

Cross-interrogatories, and answers thereto.

1st cross-interrogatory. Of what race or tribe are you ?

Ans. I am an Indian ; a Mohegan, I believe. My mother was a Marshpee Indian.

2d cross-int. What were you on board ?

Ans. Seaman ; foremast hand. I had been aboard thirteen days.

3d cross-int. How long have you been to sea, and on what voyages ?

Ans. About fifteen years ; whaling, and in the merchant service.

4th cross-int. What wages had you on board the Empire ?

Ans. Sixteen dollars a month.

5th cross-int. Did you not have some trouble with the steam-tug that you passed ?

Ans. No, sir.

6th cross-int. Where were you when she passed you ?

Ans. I was forward on the weather side of the bow, chock forward ?

7th cross-int. Did you see anybody on board the tug ?

Ans. No.

8th cross-int. Will you swear that no hail was given from the tug ?

Ans. Yes, sir.

9th cross-int. Were you where you could have heard it, if there had been any ?

Ans. I was.

10th cross-int. How was your cargo stored on board the schooner ?

Ans. Some on deck and some in the hold. I can't tell how much was on deck. Most of it was in the hold.

11th cross-int. What do you mean by the weather guage?

Ans. I mean heading so as to go to windward of a vessel coming towards you.

12th cross-int. Do you know what wages Silas Pells got?

Ans. No.

13th cross-int. Did you see any other vessels in the Narrows, at the time of the collision?

Ans. Yes, I saw some going out, a long way ahead.

his
(Signed) THOMAS ⋈ MYE.
mark.

The following "Bill of Lading" was filed in court, Feb. 1st, 1860, viz.:

Shipped, in good order and condition, by Joseph P. Glover & Co., on board the good schooner called the Empire, whereof Hutchins is master for the present voyage, now lying in the port of Boston, and bound for Bristol, to say.

Tenez.	40 hhds.	(40) Forty hhds. Sugar.
G & F A	74 boxes.	
—"— B	92 "	
—"— H	10 "	(176) One hundred and seventy-six boxes Sugar.

Being marked and numbered as in the margin, and are to be delivered in like good order and condition, at the aforesaid port of Bristol (the danger of the seas and fire only excepted), unto Messrs. Camp, Brunsen & Sherry, or to assigns, he or they paying freight for the said goods, eighty-seven and one-half cents per hhd., and twenty-five cents per box, without primage and average accustomed.

In witness whereof, the master of the said vessel hath affirmed to three bills of lading, all of this tenor and date; one of which bills being accomplished, the others to stand void.

L. S LYNDE,
Per TORREY.

Dated at Boston, Sept. 26, 1859.

[Rec. CCLXII. D. T. 1860.]—6

The following "statement" was filed in court, Feb. 1st, 1860, viz.:

Statement of 176 boxes, 40 hhds. sugar, shipped from Boston, per schooner "Empire," for Bristol, R. I., for account of Messrs. Camp, Brunson & Sherry, Sept. 26th, 1859.

G & F A	74 boxes sugar. (Havana.)	35164	5274	29890		
G & F B	92 " "	44492	6673	37819		
G & F H	10 " "	4825	724	4104		
	Net lbs.			71813 @ 7⅝c.,	$5,475	73
Tenez.	40 hhds. Muscovado sugar. Avg. net weight of 45 hhds. 1617 lbs. each.			64680 lbs. net @ 5¾c.	3,719	10
					$9,194	83
	Insured for invoice and 5 per ct. add'l. add. 5 per cent.				459	74
					$9,654	57

E. E.

(Signed) JOSEPH B. GLOVER & CO.

BOSTON, Oct. 8th, 1859.

DEPOSITIONS ON BEHALF OF CLAIMANTS.

Deposition of Henry M. Quinn.

Taken before George D. Guild, Esq., commissioner, at Boston, on the eleventh day of November, A.D. 1859.

1st interrogatory. What is your name, age, residence, and occupation.

Ans. My name is Henry M. Quinn; age, twenty-three years; residence, Boston, Mass.; occupation, seaman.

2d int. Were you, or not, on board the ship Marcellus at the time of the collision between her and the schooner Empire? If so, in what capacity?

Ans. I was; as an able seaman.

3d int. When did the collision take place? Between what islands, if any, if you know?

Ans. I do not know the names of any of the islands. I only know their names from what I saw in the newspaper. From what I saw in the newspaper, the collision took place near Lovell's island.

4th int. Were you, or not, at the time, passing between two islands?

Ans. We were.

5th int. At the time of the collision, to which shore were you nearest, the windward or leeward shore?

Ans. The leeward shore.

6th int. On which side of the channel were you?

Ans. On the lee side of the channel.

7th int. How long had you been so?

Ans. About five or six minutes.

8th int. How far from the leeward shore was the Marcellus at the time of the collision, and for five or six minutes before?

Ans. At the time the collision took place she was not more than thirty or forty feet from the shore about the five or six minutes before it is hard to tell.

9th int. Had she changed her course within five or six minutes of the collision?

Ans. Not to my knowledge; she might, for all I know.

10th int. Did she, or not, luff or keep off, to your knowledge, within five or six minutes of the collision?

(Objected to.)

Ans. The ship kept off, she did not luff.

11th int. At the time of the collision, how far was the Marcellus from the windward shore?

Ans. Somewhere about eighty or a hundred yards from the windward shore.

12th int. Did you see the schooner before the collision?

Ans. I did.

13th int. How far off was the schooner Empire from you when you first saw her?

Ans. When I first saw her she was somewhere about one hundred and fifty yards, good; all of that.

14th int. How did she bear from you?

Ans. I had no compass and could not give her bearings. She appeared to be coming down across our bows.

15th int. On which bow was she?

Ans. She was a very little on the starboard bow.

16th int. Where were you standing at the time you first saw her?

Ans. I was not standing at all. I came up on the port side of the vessel, got on to the end of the windlass, got on to the break of the forecastle, and passed round to the starboard side.

17th int. Did or not the schooner change her course from the time you first saw her down to the time of the collision?

Ans. She did.

18th int. How? State the particulars.

Ans. When the schooner standing, as I said before, a little on the starboard bow, the mate came forward and sung out, luff, but whether speaking to the ship's helmsman or the other one I could not know, but there was an answer came from on board the schooner that the helm is hard down, and just then the order came to look out, and the schooner came right into the wind right under our bow. We struck the schooner in the fore-rigging, or abaft the fore-rigging, it is hard to say which, she went down so quick.

19th int. What was the appearance of the schooner before she luffed, was she or not steady in her course?

Ans. She seemed to be yawing around, she was not steady.

20th int. When you first saw the schooner, did she appear to be going to the windward or the leeward of you?

Ans. She appeared to be going to leeward.

21st int. If she had kept her course close-hauled on the wind, from the time she rounded Nix's Mate, would she or not have gone to windward of you?

(Objected to.)

Ans. She would.

22d int. How was the wind at the time?

Ans. About southwest.

23d int. How long have you followed the seas?

Ans. Since March 3d, A.D. 1852.

24th int. How long as able seaman?

Ans. I have done the duty of able seaman for the last fourteen months.

25th int. From the facts stated by you, through whose fault did the collision occur—the ship's or the schooner's?

Ans. The schooner's.

Cross-interrogatories.

1st cross-interrogatory. How long before collision had you looked at compass?

Answer. Not since the early part of the day.

2d cross-int. Had the Marcellus been at anchor, and how lately, and when?

Ans. She anchored at Angier, in the Straits of Sundy, some time in June, 1859. After that she did not anchor before the collision.

3d cross-int. Had she been laying-to before you came into the harbor?

Ans. She had not been lying-to.

4th cross. How long after you got on to starboard side of forecastle before the mate called out as you say, luff?

Ans. He called out as I got up.

5th cross-int. How came you to go up there?

Ans. Curiosity to see Boston. I was looking down there all the evening.

6th cross-int. Which side is channel deepest at place of collision? How wide is channel there? What depth of water in channel? Did you ever sound it there, or see it sounded? How wide is the channel there?

Ans. I am unable to say, except when the ship struck she swung round into the lee shore, so near that I could jump from the ship to the shore, and she did not appear to touch. As to all other matters inquired of in the interrogatory, I know nothing.

7th cross-int. When the mate called out luff, did you see any danger of the vessels coming together?

Ans. I see the danger as soon as I saw the schooner come in from yawing around.

8th cross-int. How long before the collision had there been any change in the sails of the Marcellus?

Ans. I cannot say exactly, but before we came in round the Spit Light we braced the sails sharp up; after that, we did not move the sails before the collision.

9th cross-int. Where were you when you kept her off, as you before stated?

Ans. She must have been inside the Spit Light. I was down round the main deck.

10th cross-int. Could you see where you was? Did you go to the wheel, or look at the compas?

Ans. I could see. I did not go to the wheel or compass?

11th cross-int. Do you say the Marcellus was sharp up to the wind before you came round Spit Light?

Ans. The yards were braced up as sharp as they could be, with all the bowlines out fore and aft.

12th cross-int. How after you passed the Spit Light was it?

Ans. The yards were not touched after we passed the light.

13th cross-int. How did Marcellus have the wind after passing Spit Light?

Ans. She was going a little free, how much I can't say.

14th cross-int. Was there room for the schooner to have gone to leeward of ship, when mate called luff, as you say?

Ans. She might have gone to leeward with a little scraping, and she might not; I can't say.

15th cross-int. Scraping on what?

Ans. I mean scraping alongside of the ship, so that some of the yards or rigging might take.

16th cross-int. How do you know how the wind was at time of collision?

Ans. I could not say exactly, but it was about southwest.

17th cross. (*De bene esse.*) What was the schooner's fault?

Ans. The fault lay in coming into the wind right underneath our bow?

18th cross-int. Where were you born?

Ans. Boston, Mass.

19th cross-int. Have you seen the pilot since the collision?

Ans. I see him once.

(Signed) HENRY M. QUINN.

Deposition of Samuel T. Donnell,

Taken before Elias Merwin, commissioner, at Boston, on the twelfth day of December, A.D. 1859.

1st interrogatory. State your name, age, residence, and occupation?

Answer. My name is Samuel T. Donald, age fifty-two years, residence Somerville, Mass., and I am a master mariner.

2d int. How long have you followed the seas, and in what capacities?

Ans. I have followed the seas thirty years; about twenty-seven as master.

3d int. What kind of vessels have you commanded, and in what business?

Ans. All kind of vessels, from a sloop to a ship and steamboat; part of the time packeting from here to Maine, and then in European and East India business.

4th int. Were you or not on board the ship Marcellus at the time of the collision with the schooner Empire, referred to in this case?

Ans. I was.

5th int. What were you on board, and where from?

Ans. A passenger, from Singapore.

6th int. Were you or not on deck at the time? if yea, how long had you been on deck?

Ans. I was. I had been on deck ever since supper, an hour and a half to two hours.

7th int. Where were the vessels at the time of the collision,—in what waters?

Ans. In the Narrows, between Lovell island and Gallup's island, I believe it is.

8th int. How was the wind at and shortly before the collision?

Ans. Southwest.

9th int. To which shore was the collision nearest, and how near the shore?

Ans. The northern shore, between thirty and forty feet. I mean the leeward shore.

10th int. On which side the channel was it, windward or leeward?

Ans. Leeward.

11th int. How long had the Marcellus been on the leeward shore, and how near had she been sailing to that shore since she came up with the island?

Ans. She had been on the leeward shore since she doubled round the Spit, and came up by the island. After she came up with the island, she was sailing between thirty and forty feet of the shore.

12th int. How had the Marcellus the wind at and before the collision, and while sailing along that shore?

Ans. About southwest. She had the wind abeam.

13th int. Where you standing, at and for a few moments before the collision?

Ans. On the quarter deck, near the wheel.

14th int. Who was near you at the time?

Ans. The pilot was standing near.

15th int. Who was at the wheel?

Ans. I don't know his name. I believe they called his name "Jim" aboard.

16th int. What was the first thing you saw or heard of the schooner Empire?

Ans. The first thing I heard was the pilot tell the mate to step forward and see which way the schooner was going.

17th int. What did the mate do?

Ans. He jumped forward on the forecastle, and sung out, "All right, sir."

18th int. Did you see the schooner when the pilot spoke to the mate.

Ans. No, sir.

19th int. Could the Marcellus go any nearer to the lee shore than she was sailing, with safety?

Ans. No.

20th int. What was the next thing you heard from the mate forward?

Ans. The mate says, luff.

21st int. What was the next thing done?

Ans. I jumped to the wheel, took hold of the wheel with the man, and hove it down four or five spokes. The pilot said, no no, he jumped at the wheel, caught hold of it, and I let go.

22d int. What did the pilot do with the wheel when he caught it?

Ans. He caught hold of the wheel to heave it up. I let go of it, and went forward to look after the schooner.

23d int. How much was the wheel hove down, in all,—how many spokes?

Ans. About five spokes; four or five spokes; about half a turn, that is all.

24th int. How many spokes were there in the wheel?

Ans. Eight.

25th int. Did you see the schooner before the collision?

Ans. No. I saw her jib-boom come by our bow, and just as she got between the masts, we struck her about midships.

26th int. How was the Empire heading when you saw her?

Ans. About southeast. No, I'm mistaken there. We were heading northwest, and she was heading about cross our bow. She was heading about south-southwest.

27th int. Was she on her course, or how otherwise?

Ans. She was luffed to of her course.

28th int. Did the Marcellus change her course when the helm was hove down, as stated by you?

Ans. No.

29th int. Why not?

Ans. It wasn't hove down enough to have any effect upon her, unless it had been there a longer time than it was. The order was countermanded immediately, and the helm shifted, so that she hadn't time to alter her course.

30th int. How did the schooner have the wind before luffing, ahead, or free, or how?

Ans. The wind free, abeam.

31st int. Could or not the schooner have gone to the windward of the Marcellus, if she had kept her proper course?

Ans. She could have gone to windward; plenty of room.

32d int. If she had kept her wind after rounding Nix's Mate, how far to the windward might she have gone?

(Objected to.)

Ans. She would have come in contact with Gallup's island, if she had kept her wind. She might have gone two or three hundred feet to the windward of us.

33d int. Could she have gone to the leeward of the Marcellus and between her and the leeward islands?

Ans. She might have gone to leeward, but she would have been very near the shore and the vessel too.

34th int. Would it have been safe or prudent for her to attempt that?

Ans. She would have run the risk of getting ashore, or striking the ship.

35th int. How ought she to have gone, to the windward or leeward?

(Objected to.)

Ans. To the windward.

36th int. From the facts testified to by you, through whose fault, in your opinion, did the collision occur?

(Objected to.)

Ans. I should think it was the fault of the schooner.

37th int. From all the facts and circumstances, as you saw them, at the time, through whose fault, in your opinion, did the collision occur?

(Objected to.)

Ans. I should say the schooner's.

38th int. Could the schooner avoid the collision, and how?

Ans. By keeping to windward; by keeping clear of the ship.

Cross-Examination by C. T. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. What course was the schooner on before you saw her, as you say, across the bow of the ship?

Answer. I can't say, for I didn't see her.

2d cross-int. How do you know, then, how the schooner had the wind before you say she luffed?

Ans. I supposed she was coming down the harbor. She couldn't have been going up the harbor, or we wouldn't have met her.

3d cross-int. That is all the knowledge you have, is it, on that point?

Ans. Yes.

4th cross-int. Did you stop to see the pilot make any change in the wheel after you left it?

Ans. No.

5th cross-int. Where did the pilot come from when he came to the wheel, from the top of the house, or do you know?

Ans. He was standing alongside of me. He came from the weather side of the deck.

6th cross-int. Did you see him get up on the house at any time just before the collision?

Ans. I didn't notice him.

7th cross-int. On which side of the ship were you standing, before the pilot sent the mate forward to look at the schooner, as you have stated?

Ans. The weather side; the larboard side. I was standing about abreast of the skylight, three or four feet forward of the wheel.

8th cross-int. Had the Marcellus a house on deck, aft? how was her deck?

Ans. She had a poop deck with a companion house up through it, about three feet. The poop deck was about three and half feet high. The house was about three feet above the poop deck, and there are steps aft, from the poop deck on to the house, on each side.

9th cross-int. What was the pilot's name? How long have you known him?

Ans. George Williamson, I think his name is. I never knew him before.

10th cross-int. Had you been looking at the lee-shore before your attention was called to the schooner?

Ans. Yes.

11th cross-int. Who was with you on deck at the time just before you saw the schooner?

Ans. I didn't notice any one but the pilot.

12th cross-int. Do you give the wind from having looked at the compass?

Ans. No.

13th cross-int. Are you now in command of any ship, and what ships from Boston have you commanded in the last five years?

Ans. I am now in command of the bark Charles & Jane, of Bath, Maine, and am about going to sea. I have commanded the ship William Patten, of Boston, and the bark "Abajun," of Boston, within five years, and the steamer Eastern State.

14th cross-int. (*De bene.*) What did you see the schooner do that you considered a fault?

Ans. I saw her come across our bows.

15th cross-int. (*De bene.*) Was that all?

Ans. Yes, that was all I saw her.

(Signed) SAMUEL T. DONNELL.

Deposition of Lancis Crocker.

Taken before William S. Dexter, Esquire, commissioner, at Boston, on the twenty-third day of November, A. D. 1859.

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is Lancis Crocker; age, sixteen; residence, Hyannis; occupation, sailor. I have followed the sea two years and a half.

2d int. Were you or not on board the ship Marcellus at the time of the collision with the schooner Empire? If so, in what capacity?

Ans. I was; as a boy.

3d int. Had you or not been at the wheel? If so, when last?

Ans. I had been at the wheel for about half an hour. I can't say at what time I was relieved, nor how long before the collision.

4th int. On which side of the Marcellus was the wind blowing at the time of the collision?

Ans. On the larboard side.

5th int. How near the leeward shore was you sailing at the time of the collision, and just before?

Ans. About forty feet from it.

6th int. How near the windward side?

Ans. About two hundred feet.

7th int. How were the Marcellus' yards?

Ans. Braced nearly up.

8th int. Did you see the schooner before the collision? If so, how far off was she when you first saw her?

Ans. I did. She was about a third of a mile off when I first saw her.

9th int. How was she heading at the time; to the windward or to the leeward of you?

Ans. To the windward of us.

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10th int. Where were you standing when you first saw her?

Ans. On the topgallant forecastle, forward.

11th int. Did you hear any hail from her to your vessel? If so, who hailed, and what was the hail?

Ans. I did. Our mate hailed her to luff.

12th int. If the schooner had then luffed, where would she have gone?

Ans. She would have gone clear of us, to windward.

13th int. What did the schooner do, when hailed to luff by the mate?

Ans. She kept off.

14th int. What did you do then?

Ans. We kept off also. I left the deck, and went down on the main deck.

15th int. Did you see the schooner again before the collision took place?

Ans. I did not.

16th int. Did you see her at the time of the collision? If so, how did she lay?

Ans. I did. We struck her amidships. We struck her on the larboard side. She laid across our bow.

17th int. Could the Marcellus keep off any more than she did?

Ans. No, sir.

18th int. Why not?

Ans. If she had she would have gone ashore.

Cross-Interrogatories, and Answers thereto.

1st Cross-Interrogatory. Did you see the mate come forward?

Answer. No, sir. I saw him on the topgallant forecastle, giving orders to the schooner and to the man aft, but I didn't see him when he went there.

2d cross-int. Which was on the topgallant forecastle first, you or the mate?

Ans. We were all there together. I don't know which of us went there first.

3d cross-int. Did you see the mate before you heard him hail the schooner?

Ans. Yes, sir.

4th cross-int. Where, and what was he doing?

Ans. On the topgallant forecastle. He wasn't doing anything.

5th cross-int. What was you doing on the topgallant forecastle?

Ans. I wasn't doing anything.

6th cross-int. What did you go there for? How happened you to go there at that time?

Ans. I don't know. All the crew was up there.

7th cross-int. Did you see any steamer when you were up there, and before the collision?

Ans. I did not see any while I was up there?

8th cross-int. Why did you leave there?

Ans. Because the mate ordered us to leave the forecastle.

9th cross-int. Was that before or after he ordered the schooner to luff?

Ans. After.

10th cross-int. What did the schooner reply when the mate hailed her to luff?

Ans. I didn't hear her say anything.

11th cross-int. How many times have you been through the place where this collision happened?

Ans. Never, except that time.

12th cross-int. Was it then light or dark?

Ans. It was between daylight and dark; about dusk.

13th cross-int. How wide is the channel there?

Ans. About three hundred feet.

14th cross-int. Has any one ever told you so?

Ans. Yes, sir.

15th cross-int. Who?

Ans. I forget who told me. I have been told so.

16th cross-int. With whom have you talked about this collision?

Ans. With nobody but Mr. Scudder.

17th cross-int. What course were you sailing before you came into the harbor that night?

Ans. I don't know.

18th cross-int. Are you sure that there was no reply from the schooner when the mate hailed her to luff?

(Objected to.)

Ans. I didn't hear any. I am not sure that there wasn't any.

19th cross-int. Was you paying very particular attention to what was going on?

Ans. No, sir.

20th cross-int. Did you see any steam-tug boat pass up by you just before or about the time of the collision?

Ans. No, sir.

21st cross-int. When did you first think the ship would strike the schooner?

Ans. I don't know.

22d cross-int. Did you think she would strike her when the mate ordered you to leave the topgallant forecastle?

Ans. Yes, sir.

23d cross-int. Did you think she would strike her when the mate hailed the schooner to luff?

Ans. I don't know.

24th cross-int. Did you call the attention of any one to the schooner when you saw her?

Ans. No, sir.

25th cross-int. Do you know whether or not the mate was on the topgallant forecastle when you first saw her?

Ans. I do not.

26th cross-int. How do you judge how far you were from either shore at the time of the collision?

Ans. From looking at it I could tell pretty near how far we were from shore.

27th cross-int. Were you looking at the shore at the time of the collision?

Ans. No, sir.

28th cross-int. Was there some confusion on the ship when and after you struck the schooner?

Ans. Yes, sir.

29th cross-int. Did you afterwards find that the ship was near the lee shore?

Ans. Yes, sir.

30th cross-int. Is that what makes you think that you were about forty feet from the lee shore when the collision took place?

Ans. Yes, sir.

Further Interrogatories on behalf of Respondents, and Answers thereto.

1st interrogatory. Was that all that made you think she was near the lee shore at the time of the collision?

Ans. Yes, that's all.

2d int. Did you or not see the lee shore before the collision?

Ans. No, sir.

3d int. Do you mean to say that you did not see the lee shore before the collision?

Ans. I do.

(Signed) LANCIS CROCKER.

Deposition of Francis D. Crowell,

Taken and sworn to at Boston, in the District of Massachusetts, on the twenty-second day of November, A.D. 1859, before William S. Dexter, Esquire, commissioner.

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is Francis D. Crowell; age, twenty-four; residence, Hyannis; occupation, mariner. I have followed the sea ten years.

2d int. In what capacity?

Ans. I went before the mast four years; then two years as second officer; the rest of the time as mate. I have been always mate of ships from fifteen hundred tons down to seven hundred.

3d int. Were you or not on board the ship Marcellus at the time of the collision between her and the schooner Empire, at sea? If yea, where were you at the time?

Ans. I was on board. I was aft, on the poop. I was mate of the Marcellus.

4th int. How was the wind at the time of the collision, and how do you know?

Ans. the wind was southwest. I know it from having looked at the compass when we were eight or ten miles outside of Boston Light.

5th int. Where was the collision—between what islands?

Ans. Between Dover's island and the land opposite. I mean Lovell's island and the land opposite. I don't know the name of the land opposite.

6th int. On what tack were you, and under what sail?

Ans. On the larboard tack, with all plain sail set—all sail but studding sails. The lee clew of the mainsail was hauled up, so that the pilot could see forward.

7th int. On what side was the wind blowing, and how much breeze was there, and how fast were you sailing?

Ans. The wind was blowing on the larboard side. We were going between seven and eight knots.

8th int. On which side of the channel, or passage or channel, were you sailing, and how near the land on the leeward and windward side?

Ans. On the lee side—the north side. We were within thirty feet of the land on the lee side: some three hundred feet from the other side, I should judge.

9th int. Was or not your ship sailing as near as was safe to the lee shore?

Ans. She was.

10th int. How had you the wind?

Ans. The wind with us was southwest. The wind was a point forward of the beam.

11th int. How long before the collision did you see the schooner, if at all, and how far off was she, when you first saw her, and how did she bear from you?

Ans. I saw her some five minutes before the collision, as I should judge. I should think she was then nearly three-quarters of a mile off. She bore N. W. by W. She was very near right ahead; if anything, a very little on the lee bow.

12th int. On what tack was she, under what sail, and how had she wind?

Ans. She was on the starboard tack, under her four lower sails—all her sails, I suppose. She had the wind southwest, and on her starboard beam, or a little abaft the beam.

13th int. After you first saw the schooner, did your ship alter her course before the collision?

Ans. She did.

14th int. How and when?

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Ans. after we passed the Spit Light, the ship was kept off about one point, to give her a better full. This was about the time we first saw the schooner. I did not perceive that the ship altered her course a particle after that, until the collision.

15th int. Where were you standing when you first saw the schooner?

Ans. On the lee side of the poop, within three feet of the pilot.

16th int. What took place from that time down to the collision?

Ans. The pilot showed me the vessel coming down, and told me to go forward and see which side of the ship he intended to go. I went forward and got on the topgallant forecastle. Before I turned round to speak to the pilot, I looked at the schooner to see which side of the ship she intended to go. I then hailed the pilot and sung out to him "all right—she's going to windward." At that moment there was a steamer just on our port bow. After I had hailed the pilot, the steamer was right between the schooner and the ship. I heard the captain of the steamer sing out to the schooner to look out for that ship coming up. By the time he had finished that sentence, the steamer was on the starboard bow of the ship. When she was there, I sung out to the captain of the schooner, "luff you on board the schooner—luff, luff," several times in succession. I heard the captain of the schooner sing out to us to keep off. He said "hard up—hard up." By the time I had got through singing out two or three times, the ship and schooner were coming together so fast that I saw there was no getting clear of a collision. Then I told the men who were standing beside me to leave the topgallant forecastle, and I left it last and went into the middle part of the ship, with the rest of them. When I started to leave the topgallant forecastle, I saw the schooner begin to luff, and when I got to the middle part of the ship the schooner was lying nearly across our bow, and I suppose it wasn't fifteen seconds after that, that we struck.

17th int. How near the leeward shore were the vessels when the collision occurred, and how far from the windward shore?

Ans. Within thirty feet of the lee shore, and nearly three hundred feet, I should judge, from the windward shore.

18th int. Did, or could, the ship keep off before the collision?

Ans. She did not, that I could perceive. She could not do so with safety.

19th int. You say the schooner luffed before the collision. From the position in which the vessels lay when they were coming together, how many points must the schooner have luffed?

Ans. She must have luffed eight points.

20th int. Why eight points? State your reasons.

(Objected to.)

Ans. Because she laid across the channel—right square across the ship's bow.

21st int. When you went forward at the pilot's request, you said the schooner was going to the windward? why do you say so?

Ans. Because I thought she would see that we were so near the lee shore she couldn't pass to leeward, and all the vessels we had met had gone to windward; we had met several.

22d int. Where was the steamer at that time?

Ans. On our port bow.

23d int. From the schooner's appearance and course at that time, how did she seem to be going—to the windward or leeward?

Ans. I should judge she was going to windward.

24th int. After the steamer passed, did the schooner or not change her course?

Ans. She did. She luffed to pass the steamer, and then kept off again on the same course as before.

25th int. How near the ship did she come before she luffed again, as stated by you?

Ans. When she commenced to luff again, I should think she was from once to twice her length from the ship—twice her length.

26th int. What was the hail on board the schooner, to which you have referred?

Ans. He sung out for us to hard down—no, to hard up, as I said before.

27th int. How is it with the Marcellus as to minding her helm? Does she mind it quick or slow?

Ans. For a ship she minds it very quick, but not half so quick as a small vessel. If her wheel were turned four or five spokes, and then turned back again quick, she would mind it scarcely any, in smooth water.

28th int. Could the schooner have gone clear of the ship? If so, how?

Ans. She could, if she had kept the same course that she luffed when the steamer was passing between her and the ship, or by luffing and keeping on the weather shore before she came up with the steamer.

29th int. How far to the windward of the ship could she have gone if she had used all the efforts in her power?

Ans. From a hundred and fifty to two hundred feet.

30th int. Could the ship do anything more than she did to avoid the collision?

Ans. The ship could not keep off any more with safety, and she couldn't luff.

31st int. Why could not she keep off more with safety, and why could not she luff?

Ans. She would have gone ashore if she had kept off any more. She couldn't luff, because we supposed the schooner was going to windward, as it was her place to do.

32d int. Upon the facts stated by you, through whose fault, in your opinion, did the collision occur, and why?

(Objected to.)

Ans. I should say it was the schooner's fault, as far as I know the truth, because we were on the lee side of the channel, and she was running with a free wind, and had every opportunity to pass on the weather side.

33d int. Upon all the facts, as you saw them, through whose fault did the collision occur?

(Objected to.)

Ans. Through the schooner's fault, as I said before.

34th int. Have you or not, before giving your deposition in the case, received any release from the owners of the ship Marcellus? If so, produce the same.

(Objected to, for substance.)

Ans. I have, and here produce it.

(The paper here produced is marked by the commissioner, "R., W. S. D.," for identification.)

Cross-interrogatories, put *de bene esse*, objecting to the competency of the witness, and answers thereto.

1st cross-interrogatory. Are you as positive that the ship, at the time of the collision, was within thirty feet of the lee shore, as you are of anything you have stated?

Answer. [To the best of my judgment she was.] I am.

(That in brackets objected to, as irresponsive.)

2d cross-int. Are you still attached to the Marcellus?

Ans. No.

3d cross-int. What is the width and depth of the channel opposite Lovell island? Which side is deepest?

Ans. I do not know the width or depth. I know that the north side of the channel is much bolder than the south side.

4th cross-int. How long after pilot told you to go forward before you started to go?

Ans. Instantly, as soon as he finished speaking.

5th cross-int. What hail came from the schooner when you hailed? State all.

Ans. When I sung out to them to luff, they sung out from the schooner "luff you, luff you." That was the response he made to me. When I stated before, I was thinking that he said for us to hard up our helm, but what he did sing out was for us to luff.

6th cross-int. Have you now given the exact words, and all the words, of the schooner's hail to you?

Ans. I have.

7th cross-int. After the schooner passed the steamer, do you say she was to the leeward of the ship?

Ans. I say she was right ahead of the ship.

8th cross-int. Were you the first who left the topgallant forecastle?

Ans. No, I was the last?

9th cross-int. When did you first think the vessels would come together?

Ans. After I had done singing out for the schooner to luff.

10th cross-int. What ship are you now attached to? How long have you been in the Marcellus?

Ans. I am attached to no ship. I was in the Marcellus one voyage, about fourteen months.

11th cross-int. Who was with you and the pilot before you went forward?

Ans. One Captain Donald, and Mr. Edward Mead, passengers, the captain's wife, and the man at the wheel. Mr. Mead was from Albemarle county, Virginia. I don't know what place.

12th cross-int. Where was the captain?

Ans. I don't know.

Further Interrogatory on behalf of Respondents.

1st interrogatory. Did the schooner luff when you hailed her to luff?

Ans. No.

FRANCIS D. CROWELL.

Deposition of Henry H. Gage.

Taken and sworn to at Boston, in the district of Massachusetts, on the twenty-second day of November, A.D. 1859, before William S. Dexter, Esq., commissioner.

1st interrogatory. What is your name, age, residence, and occupation? Were you on board the Marcellus when the collision occurred, and in what capacity?

Answer. My name is Henry H. Gage; age, eighteen; residence, Hyannis. I follow the sea, and have done so for two years. I was on board the Marcellus when the collision occurred as cabin boy.

2d int. Where were you at the time of the collision, and what were you doing, and how long had you been so engaged?

Ans. I was sitting down on deck by the capstan, talking with the steward. I had been doing so about ten minutes.

3d int. Did you see the schooner Empire before the collision, or had you seen or heard anything of what was done or said before the collision relating to the same?

Ans. I did not see her. I might have heard the shouting, but did not notice it. I was talking earnestly with the steward.

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4th int. On which side of the passage was the ship at the time of the collision, and how near to the leeward shore?

Ans. She was on the lee side of the passage. When I heard the collision she was close on shore.

5th int. To what shore was the ship nearest, the leeward or windward?

Ans. The leeward.

6th int. Do you know which way the wind was, or how the ship was sailing, before the collision?

Ans. The yards were braced up sharp; I don't know how the wind was.

7th int. Is there any other fact within your knowledge relative to the collision, and occurring before the collision?

Ans. No.

8th int. Have you or not, before giving your deposition, received any release from the owners of the ship Marcellus? If yea, produce the same.

(Objected to, for substance.)

Ans. I have, and here produce it. (The paper here produced is marked by the commission, "A., W. S. D.," for identification.)

Cross-interrogatories, put *de bene esse*, objecting to the competency of the witness.

1st cross-interrogatory. Was it light or dark?

Answer. It was about dusk. Six o'clock in the evening.

2d cross-int. Did you see the shore when the collision happened? Was you then looking at it?

Ans. I saw it. Afterwards I went and looked over the side. At the time of the collision I was looking at the shore.

3d cross-int. How wide is the channel where the collision occurred?

Ans. I don't know.

4th cross-int. How many times have you been through it?

Ans. Once going down and once coming up.

HENRY H. GAGE.

Deposition of Freeman H. Lothrop,

Taken and sworn to at Boston, in the district of Massachusetts, on the twenty-fifth day of November, A.D. 1859, before William S. Dexter, Esquire, commissioner.

1st interrogatory. State your name, age, residence, and occupation?

Answer. My name is Freeman H. Lothrop; age, seventeen and a half; residence, Barnstable; occupation, sailor. I am not doing anything at present.

2d int. Were you or not on board the ship Marcellus, at the time of the collision between her and the schooner Empire? If yea, in what capacity?

Ans. I was, as boy.

3d int. Where did the collision occur, as near as you know?

Ans. In a place called the Narrows, near Lovell's island.

4th int. Where were you at the time of the collision?

Ans. I was well aft on the deck at the time she struck. I came from the topgallant forecastle, and went aft.

5th int. How was the wind, and how were the yards of the ship?

Ans. I don't know which point of compass the wind was from. The yards were braced up on the port tack.

6th int. On which side of the Marcellus did the wind blow?

Ans. On the port side; the larboard side.

7th int. How did the Marcellus have the wind at the time of the collision, and before?

Ans. About abeam.

8th int. Was it light or dark at the time of the collision?

Ans. Neither very dark nor very light.

9th int. To which shore was the Marcellus nearest, at and before the collision, and how near to the leeward shore?

Ans. She was nearest the leeward shore. I couldn't tell exactly how near. I should think somewhere about fifty feet.

10th int. How long before the collision, if at all, did you see the schooner, and how far off was she?

Ans. I saw her two or three minutes before the collision. I couldn't tell how far off. I should think as far as twice the ship's length.

11th int. Where were you standing when you first saw the schooner?

Ans. On the topgallant forecastle.

12th int. How did she bear from the Marcellus—to windward or leeward, or how?

Ans. She was about ahead when I first saw her.

13th int. Did she change her bearing or course at all afterwards? If so, how?

Ans. She came down close to us, a little on the lee bow. When she got close to us, she luffed up on the wind.

14th int. Before she luffed, how did she appear to be going—to windward or to leeward of you?

Ans. To leeward of us.

15th int. How long before the collision did she luff? and how far off was she when she began to luff?

Ans. Just before we struck her. I couldn't say how far off she appeared to be when she began to luff.

16th int. How many points did she luff?

Ans. I couldn't be positive, but I should think six or seven points.

17th int. How did the schooner have the wind during the time you saw her before the collision?

Ans. I should think she had the wind about abeam—very near it.

Cross-interrogatories.

1st cross-interrogatory. After the collision, did the ship and the schooner get nearly on to the leeward shore?

Answer. Yes, sir.

2d cross-int. Did you take any particular notice of the distance the lee shore was from the ship before the collision took place?

Ans. No, I never took any particular notice. I looked at it several times, but not for the purpose of seeing how far it was.

3d cross-int. How far was it to the windward shore? and how many times have you been through the Narrows?

Ans. I don't know how far it was. I have never been through there but twice, in the daytime, including this time. I have been through once in the night.

4th cross-int. What did you do right after the collision, and for five or ten minutes following?

Ans. Not much of anything; helping to clear up.

5th cross-int. How long had you been on the topgallant forecastle before you saw the schooner?

Ans. I couldn't say. I had been there some time. There wasn't much doing, and we were, most all of us, on the forecastle, looking at the city.

6th cross-int. Did you see the mate when he came forward?

Ans. I did not see him when he came forward. I saw him after he was on the forecastle.

7th cross-int. Had you noticed the schooner particularly before the mate came forward?

Ans. No, sir; I don't know but the mate was forward when I first saw the schooner, but I didn't notice him.

8th cross-int. Did you notice the mate there shortly after you saw the schooner?

Ans. Yes, sir.

9th cross-int. Right off? How soon?

Ans. A minute afterwards. It was but very few minutes after I saw her that we came together.

10th cross-int. Can you swear it was a minute after? or do you mean that you noticed the mate at about the same time that you noticed the schooner?

Ans. I couldn't swear that it was a minute after. I did notice the mate about the same time that I noticed the schooner, but I noticed the schooner first.

11th cross-int. What did the mate do after you saw him and before the collision?

Ans. He was on the topgallant forecastle, and he hailed the schooner.

12th cross-int. What was the hail? Was there any, and what reply? State fully.

Ans. I don't know what the hail was. There was a reply. I don't knw what it was.

13th cross-int. Could you not hear the hails?

Ans. Yes, sir.

14th cross-int. Why cannot you tell what they were?

Ans. I did not take particular notice, and have forgotten.

15th cross-int. Did the mate hail the schooner to luff?

Ans. I could not say.

16th cross-int. Can you tell anything that came from the schooner in reply to the mate's hail?

Ans. No, sir.

17th cross-int. Where were you when the mate hailed, and until the collision? When did you leave the topgallant forecastle? and why?

Ans. I was on the topgallant forecastle until just before we were going to strike. Then I ran aft to get out of danger, and because the mate ordered us to stand clear.

18th cross-int. Do you mean to say that you cannot remember a word of the mate's hail, or of the reply?

Ans. I do mean to say so.

19th cross-int. Did you think when you first saw the schooner that you should strike her?

Ans. No, sir.

20th cross-int. When did you first think you should?

Ans. When she began to luff.

21st cross-int. If she had not luffed, as you say, do you think you would have gone clear of her?

Ans. Yes. I think we should.

22d cross-int. Was this luffing that you speak of, after the mate hailed her?

Ans. Yes, sir.

23d cross-int. Did you see the man at the schooner's helm?

Ans. I did not.

24th cross-int. Did you call any one's attention to the schooner before you noticed the mate?

Ans. Not that I know of.

25th cross-int. Did you see any steam tug-boat, before the collision? If so, where?

Ans. I did. When I first saw her she was coming down, towing a ship, when we were outside the light. She left that ship, and came on our port side and spoke us. Our captain was conversing with somebody on board of her, about being towed up, but before we got to the Narrows she left us and went ahead. I watched her until my attention was drawn to the schooner. I think she had then got past the schooner.

26th cross-int. Did you hear her hail the schooner when she passed her?

Ans. I did not.

27th cross-int. At the time you say the schooner luffed, were you looking at her or at the land?

Ans. At the schooner.

28th cross-int. Were there any changes made in her sails? or how was the luffing done?

Ans. I didn't notice whether there was any change in her sails. I saw her bows come up into the wind.

29th cross-int. How wide is the channel at the place of the collision, in your judgment?

Ans. I couldn't say. The island on one side appeared ahead of that on the other, as I saw them that evening. I only know from having seen them there. I don't know the distance across the channel. I never noticed the land on the port side, abreast of the island which I was told was Lovell's island.

30th cross-int. How far is it between the two islands?

Ans. I should think about three times the ship's length. I couldn't say certainly.

31st cross-int. Did you notice whether the ship came up to the wind any, at or before the time of the collision?

Ans. I did not.

32d cross-int. You say the schooner luffed—did she then appear to be across your bows?

Ans. No, sir. She appeared as if she would be there in an instant. I went off then, as soon as she began to luff.

33d cross-int. Was this change a sudden one?

Ans. Yes. It appeared as if she just did it in answer to something that was spoken to her.

Further Interrogatories on behalf of Respondents.

1st interrogatory. When you first noticed the schooner, where was the steam-tug to which you have referred?

Ans. I couldn't say precisely. I cannot say whether she was between the ship and schooner, or had passed the schooner, or was alongside the schooner.

2d int. How many times did the mate hail the schooner?

Ans. I am not certain. I think two or three.

3d int. Did the schooner luff when first hailed by the mate?

Ans. No, sir.

4th int. If she had luffed when first hailed by the mate, would she or not have gone to windward of the ship?

(Objected to.)

Ans. I do not know. I think she would, but I do not know whether the ship was luffing or keeping off, and therefore cannot say for certain whether she would have gone clear.

5th int. If she had luffed when you first saw her, would she or not have gone clear of the ship?

Ans. I cannot say for certain.

Further Cross-Interrogatories.

34th cross-int. How long have you been to sea? How many voyages?

Ans. This was the first voyage.

35th cross-int. How long time was there between the mate's hails?

Ans. Not more than time enough to answer.

36th cross-int. Can you now remember any of them?

Ans. I cannot.

FREEMAN H. LOTHROP.

Deposition of William T. Wallace,

Taken and sworn to at Boston, in the District of Massachusetts, on the twenty-fifth day of November, A.D. 1859, before William S. Dexter, Esq., commissioner.

1st interrogatory. State your name, age, residence, occupation, and how long you have followed the same?

Answer. My name is William T. Wallace; age, twenty; residence, Barnstable. I follow the sea, and have done so for four years and a half.

2d int. Were you or not on board the ship Marcellus at the time of the collision between her and the schooner Empire? If yea, where did it take place, if you know?

Ans. I was. It took place in a place which they said was the Narrows. It was inside of Boston Light.

3d int. How did the Marcellus have the wind at and before the time of collision?

Ans. On the port beam; nothing abaft; if anything, a little forward.

4th int. How were the yards trimmed?

Ans. Port tacks aboard—braced sharp up.

5th int. To which shore was she nearest at and before the time of collision?

Ans. the leeward shore, on the starboard side.

6th int. Did you see the schooner Empire before the collision? If yea, how long before? how far off was she; on which bow was she? and where were you standing when you first saw her?

Ans. I saw her about two minutes before the collision. She was about two hundred feet off, I should think; a very little on our starboard bow, just so that you could perceive it on the lee bow. I was standing on the topgallant forecastle.

7th int. How did she seem to be going when you first saw her?

Ans. She was keeping off to leeward of us.

8th int. Did she or not change her course at all before the collision? If yea, how and how much?

Ans. She did. She luffed up about five or six points, as near as I could judge, before we struck. She was luffing when we struck her.

9th int. When you first saw her, how had she the wind?

Ans. On her starboard beam, as near as I could judge.

10th int. Did or not the Marcellus alter her course after you saw the schooner?

Ans. I don't know.

11th int. Did you or not hear any hails from either vessels? If yea, from which, how many, and what were they?

Ans. I did. The mate of our ship hailed the schooner, and told him to put the helm hard down. Some one on board the schooner said "I am hard up." Our mate sung out again and told him that we were hard up, and for him to put his helm hard down. That was all I heard, and then the schooner luffed up.

Cross-Interrogatories.

1st cross-interrogatory. How long had you been on the topgallant forecastle when you first saw the schooner? Did you see the mate there? Did you see him come there?

Answer. I had been there about a quarter of an hour. I saw the mate there. I did not see him come there.

2d cross-int. How long after you saw the schooner before you saw the mate there?

Ans. Right after; just a moment after.

3d cross-int. After you saw the schooner, did you keep your eyes on her until the collision, or how long?

Ans. Until I went off the topgallant forecastle.

4th cross-int. After you saw the schooner, did you notice the land until after the collision?

Ans. I did not. I gave my whole attention to the schooner.

5th cross-int. Was it light or dark?

Ans. It was about twilight.

6th cross-int. State all that passed between the ship and the schooner before the collision. Give the words.

Ans. Our mate told them aboard the schooner to heave the helm hard down. The answer was "we are hard up." Then our mate told him that we were hard up, and he must put his helm hard down. Then the schooner luffed up into the wind.

7th cross-int. Did you see any steam tug-boat just before the collision?

Ans. I did.

8th cross-int. Did you see her when you first saw the schooner?

Ans. I saw her just before the schooner. Some one sung out, "there's a schooner," and I looked from the tug-boat to the schooner.

9th cross-int. Did you see the tug-boat pass the schooner?

Ans. I don't recollect.

10th cross-int. Did you hear the tug-boat hail the schooner?

Ans. I did not.

11th cross-int. Where was the tug-boat when you last saw her before you saw the schooner? What was her position in regard to the schooner?

Ans. She was to windward of the schooner, on the starboard side of her. I don't know whether she was quite up to the schooner.

12th cross-int. On which side of the schooner did the tug-boat pass?

Ans. I don't recollect seeing her pass the schooner.

13th cross-int. Do you know whether the ship was keeping off or luffing when the collision occurred?

Ans. I do not.

14th cross-int. Are you sure that you have given the words of the hails?

Ans. Yes, sir.

WILLIAM T. WALLACE.

This libel was entered at a special District Court held on the eleventh day of October, A.D. 1859, and thence was continued from time to time until this 10th day of May, A.D. 1860, and now after a full hearing of the cause, upon the facts proved, and arguments of counsel, and mature deliberation thereon had, the court doth order, adjudge, and decree that said libellants do recover against the said ship Marcellus, her tackle, apparel, and furniture, the sum of nine thousand six hundred and fifty-four dollars and fifty-seven cents damages, and costs of suit taxed at .

And, by consent of parties, it is ordered that said amount of damages shall be revised hereafter by an assessor in Boston, in case any court to which the case shall be carried by appeal shall affirm the decree of this court in favor of the libellants.

And on the said tenth day of May, A.D. 1860, the claimants filed in court their prayer for an appeal, as follows, viz.:

United States District Court, Massachusetts District.

CAMP et al.
v.
SHIP MARCELLUS.

And now the claimants of said ship appeal from the decree of this honorable court, and pray that their appeal may be allowed.

H. A. SCUDDER,
Proctor for Claimants.

Whereupon the said appeal was allowed by the court.

United States of America, District of Massachusetts.

I, S. E. Sprague, clerk of the District Court of the United States, within and for the District of Massachusetts, hereby certify that the foregoing is a true transcript of the record in the said cause, made up pursuant to the rules in regard to appeals.

[SEAL.] In witness whereof, I have hereunto subscribed my name and affixed the seal of the said court, this fifteenth day of May, A.D. 1860.

Attest, S. E. SPRAGUE,
Clerk.

This appeal was entered in this Circuit Court at the May term thereof, A.D. 1860; and the foregoing transcript of the record of the District Court was duly filed, and the appellants then and there appeared by H. A. Scudder, their proctor, and the libellants by Charles J. Russell and Thomas H. Russell, their proctors, and by leave of court, to wit, June 2d, 1860, the following

Amendment of the Answer was Filed.

United States Circuit Court.

CAMP et al.
v.
SHIP MARCELLUS, JOHN A. BAXTER
et als., claimants.

And now the claimants and respondents in the above-named cause come and ask leave to amend their answer therein by adding the following, to wit:

That, at the time of the collision referred to by the libellants, said ship Marcellus was under the entire management and control of a legally authorized pilot, who offered his services in the customary manner, and by law had a right to take charge of said ship, in respect to the employment of whom the master of said ship had no choice or power of selection; and who was alone liable for any damages arising from any fault in the navigation and management of said ship. That, if said collision occurred through any fault on the part of said ship, said pilot was, and is, alone responsible therefor.

By H. A. SCUDDER,
Proctor for Respondents.

The cause was then set down for hearing on the evidence above set forth, and the additional evidence taken in the cause subsequent to the said appeal, and was fully heard. The same was thence continued to this present term, when the following decrees are entered, to wit:

This cause came on to be heard at the last term of this court, and was argued by counsel, and was thence continued to this present term; and now, after mature deliberation thereon had, it is ordered, adjudged, and decreed by the court here, that the decree of the District Court in this case be and the same is hereby affirmed with costs. And by consent of parties, it is further ordered, that this cause be, and the same is hereby referred to Charles P. Curtis, junior, as assessor, to hear the parties, examine their proofs, and report to this court, as soon as may be, the amount of damages sustained by the libellants, by reason of the wrongs complained of, and that all further orders of the court be reserved until the coming in of said assessor's report.

And now, on the coming in of the assessor's report, to wit, November 14th, 1860, it thereby appearing that the damage sustained by the libellants at the time of the collision, was nine thousand two hundred and ninety-four dollars eighty-three cents, and that said assessor has added thereto the sum of six hundred and forty-one dollars and eight cents, being an amount equal to the interest on said sum from that time to the present, and that the whole damage so by him assessed, amounts to the sum of nine thousand nine hundred thirty-five dollars and ninety-one cents. It is thereupon here ordered, adjudged, and decreed by the court that the said report be accepted, and that the said Hugh N. Camp, Edward W. Brunsen, and Charles Sherry, Junior, recover against the said ship Marcellus, her tackle, apparel, and furniture, the said sum of nine thousand nine hundred thirty-five dollars and ninety-one cents, as and for their damages, together with their costs of suit taxed at

And thereupon, in open court, the said claimants file the following

Claim of Appeal.

And now the above-named claimants, the respondents in the above-named cause, conceiving themselves aggrieved by the final decree entered on the fourteenth day of November, 1860, in the above-entitled cause, do hereby appeal therefrom to the Supreme Court of the United States, next to be holden at Washington, on the first

Monday of December, 1860, and they pray that this their appeal may be allowed.

H. A. SCUDDER,
Proctor for Claimants and Respondent.

Which appeal is allowed by the court, and said claimants give good and sufficient security to prosecute their said appeal with effect, and to pay all damages and costs if they shall fail to make their appeal good, which security is approved by the court.

A true record.

Attest, H. W. FULLER,
Clerk.

TESTIMONY OF LIBELLANTS, TAKEN AFTER APPEAL.

Deposition of Urial M. Hutchins, June 1, 1860.

1st interrogatory. State your name, age, residence, and occupation, and how long you have followed the seas?

Answer. My name is Urial M. Hutchins; age, thirty years; residence, Cotuit Port; and I am a seaman, and have been twenty-one years.

2d int. In what capacities?

Ans. Cook, seaman, mate, and master—eight years as master.

3d int. Were you on board the schooner Empire on her late voyage from Boston? and in what capacity?

Ans. I was, as master.

4th int. When did she leave, and where bound, and what cargo had she in?

Ans. She left on the 27th of September last, bound for Bristol, R. I., and had 176 boxes of sugar, and 40 hogsheads of sugar.

5th int. What was her condition then? What number of men had she all told? what her tonnage? had she the usual complement of men for such a vessel for such a voyage?

Ans. Her condition was stout, staunch, good condition for coasting. She had five men all told. Her tonnage was 129 tons and a fraction. She had a full complement.

6th int. Do you know of any collision between her and the ship Marcellus?

Ans. I do.

7th int. Where was it, and state what you know about it?

Ans. It was seven o'clock of the evening of September 27th last, in Boston Narrows. After passing Nix's Mate we luffed to, and hauled the sheets flat aft by the wind, filled away. I looked at the compass and she headed southeast by south. Soon after that we see a sail coming round Spit Light, likewise heard a steam-tug, and supposed she had her in tow. In a short time perceived she was not in tow. The steam-tug came along and passed us fifty feet or a hundred feet to leeward. Still keeping the vessel close to the wind, being one point on the weather shore. Standing on the leeward side of the quarter, watching the ship closely, perceived the ship was heading about for our lee fore-rigging. When within about a hundred yards, I run forward to the lee fore-rigging. Getting there, and seeing the ship didn't alter her course, I hailed her to keep off. They sung out to me from the forecastle of the ship to luff. Soon as that order was given the ship began to luff, and the ship very soon hit us, instantly she began to luff—striking us on the larboard side about midships, quartering aft—breaking our foremast into three pieces, tripped the heel of the mainmast, carried away the end of the bowsprit, flying jibboom, cutting the schooner down to the water's edge, and broke every plank in her main deck, and tore the foresail all to pieces. After the ship striking us, the ship paid off, driving us through the water some thirty or forty yards. Then they let the sheets and tacks fly aboard the ship—the wind being on the ship's quarter, we both drifted to leeward to shore, from eight to ten minutes from the time he struck us.

8th int. How much did the ship luff before she struck you?

Ans. I should judge one point and a half.

9th int. How do you know she luffed?

Ans. My position was directly ahead of the ship. I could see the sweep of her wake off the weather quarter, and watching her closely, could see her movements.

10th int. Could you see her weather side before this luff, where you stood?

Ans. Yes, sir, I could see it the whole length of her.

11th int. Did you remain at your lee fore-rigging after you saw her luffing? if not, where did you go to?

Ans. When I saw there was no chance of her clearing us after she commenced luffing, I ran aft.

12th int. Would she or not have cleared you, if she had not luffed?

Ans. I think she would.

13th int. What part of the channel were you in when the vessels came together.

Ans. Two-thirds of the channel to leeward.

14th int. How well are you acquainted with the channel? how often have you been through the Narrows?

Ans. I have been through the Narrows sixteen times a year on an average for twenty-one years. I never stopped day or night, and never took a pilot.

15th Int. How many years as master?

Ans. Eight years.

16th int. What trade have you been in during these 21 years?

Ans. Coasting from Boston to Albany, Philadelphia, Baltimore, and about every point on the coast.

17th int. Was there room for the ship to have gone clear of you to leeward?

Ans. Yes, sir. The best of the water was to leeward of us.

18th int. After you passed Nix Mate how did the schooner have the wind?

Ans. Southwest by south.

19th int. After you passed Nix's Mate and trimmed your sails aft, as you have said, did you alter her course before the collision?

Ans. No, sir. The vessel was kept full and by, on the wind.

20th int. As the schooner came down the harbor did she or not yaw?

Ans. She did not.

21st int. When the steam-tug passed you, did you hear any hail from her?

Ans. No, sir.

22d int. At the time the ship hailed you to luff, how near up to the wind was the schooner?

Ans. Close as she could go and go full.

23d int. Is the channel a straight course through the Narrows?

Ans. It is not.

24th int. How does it run, say from Nix's Mate to Spit Light?

Ans. It runs from Nix's Mate to Gallup Island Point, southeast; from thence to the Spit Light, southeast by east.

25th int. Where were the vessels as to these courses at the collision?

Ans. About on the angle of the two courses, about where the two courses meet.

26th int. After the collision did you ever go on board the steamer Rescue?

Ans. Not till she arrived up town. I did then.

27th int. How many times and with whom?

Ans. Once only, and then in company with Mr. Littlefield.

28th Int. Did you then say to Mr. Littlefield, or any other person, that you never turned out for any one going down the harbor, or any words to that effect?

(Objected to, as leading.)

Ans. I did not.

29th int. At the time the ship hailed you to luff, how fast was she going?

Ans. I should judge about nine knots.

30th int. How fast the schooner?

Ans. About three.

31st int. How far was the ship from the schooner when she hailed you to luff?

Ans. About one hundred yards, I should judge.

Cross-Examination by H. A. Scudder, Esq., Proctor of Respondents.

1st cross-int. What part, if any, did you own of the schooner Empire at the time of the collision?

Ans. Not any.

2d cross-int. How old is the schooner Empire?

Ans. She was ten years old at the time.

3d cross-int. How many times have you testified in this case before this?

Ans. Once on the stand and one deposition.

4th cross-int. Has not your deposition been taken by a United States commissioner in this case before this?

Ans. It was taken here by Mr. Scudder and Mr. Russell; by the libellants, before Mr. Commissioner Dexter.

June 2. Direct Examination Resumed.

1st direct interrogatory resumed. Please look at the paper shown to you, and state if it is the deposition given by you, and referred to by you in your answer to the last cross-question?

Answer. Yes, sir, it is.

[The libellants here tender the deposition identified by Capt. Hutchins, to be annexed to his present deposition, if respondents desire, and request to be now notified if they will have it annexed.]

[And the respondents answer that they have not had an opportunity of seeing said deposition since it was taken; that it has been in the hands of the libellants' counsel, who have refused to permit the respondents to see the same, and that therefore they are not now prepared to say whether they desire it to be annexed or not, but leave it for the libellants' counsel to do as they deem proper.]

[The libellants reply that said respondents were present at the taking of the deposition, as appears by said deposition, by their present Proctor, H. A. Scudder, Esq., and that the said Hutchins was present, and testified orally in the District Court, and the same has never been used or filed in the case, nor have the respondents ever requested to have the same filed, but nevertheless the libellants now tender said deposition for the examination of said libellants, to be annexed if they so desire, and request a decision whether they will have it annexed while the witness is present under examination.]

2d dir. res. How long did you remain by the schooner after the collision?

Ans. I remained there till eight o'clock the next morning.

3d dir. res. How far was her taffrail from dry land after she had sunk?

Ans. I should judge it was about sixty-five feet. The main mast was used to walk ashore with; it just reached at low water from the shore to the stern of the vessel. I don't know the length of the mast.

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I should judge it was about seventy-five feet for a vessel of that size.

4th dir. res. How did she head after she sunk?

(Objected to.)

Ans. She headed from the island — Lovell's island.

5th dir. res. After the ship began to luff, how long was it before the collision took place?

Ans. The vessels were one hundred yards apart, and coming together at the rate of twelve knots an hour. I don't suppose it was a minute.

Cross-Examination Resumed.

5th cross-int. Since the day you gave the first part of this deposition, and between that day and this, have you had any conversation with any person in relation to this case, and with whom?

Ans. I have, with Mr. Russell.

URIAL M. HUTCHINS.

Deposition of John Quinn.

1st interrogatory. Please state your name, residence, age, and occupation?

Answer. My name is John Quinn; residence, Boston; age, forty years; and I am a boatman.

2d int. Were you in the Narrows at the time of, and did you see the collision between the ship Marcellus and the schooner Empire?

Ans. Yes, sir.

3d int. Where were you at the time, what doing, and how long had you been there?

Ans. I was sitting on the rail of my boat, the yacht Young America. The yacht at the time was aground on the south side of the channel on Gallup's island. I had been there from four o'clock, I believe, in the afternoon — three or four o'clock. I was aground there waiting for the tide.

4th int. Where did you first see the schooner that night?

Ans. I saw her after she rounded Nix's Mate buoy. That lays off an eighth of a mile from Nix's Mate. It may not be quite so far.

5th int. How soon after she rounded the buoy did you see her?

Ans. Directly after.

6th int. Did you see her after that till the collision?

Ans. Yes, sir.

7th int. How did she come?

Ans. She was what I call on the wind, a straight course. She was on the wind.

8th int. Did she or not yaw about as she came down?

Ans. No, sir; I didn't perceive any alteration in her course.

9th int. When did you first observe the Marcellus that night?

Ans. I could see her when she came by the Spit Light.

10th int. After she passed the Spit Light, and till the collision, did you see her?

Ans. Yes, sir.

11th int. What part of the channel did she run up in till the collision?

Ans. The middle of the channel, I should call it.

12th int. Did she run up in the track vessels of her class usually take there coming up?

(Objected to.)

Ans. Yes, sir.

13th int. How near to where you were did the collision take place?

Ans. Twenty rods, I should think.

14th int. Point out on the chart shown you the place where you were.

Ans. The mark X on the map indicates the point on the island where I was, and the mark O indicates the point where the collision took place.

15th int. As the vessels approached each other, did you hear any hail, and what?

Ans. I heard some one say—I took it from aboard the ship—"Luff."

16th int. How near were they then to each other?

Ans. About two hundred feet apart.

17th int. After you heard this hail to luff, what did you next see?

Ans. I noticed that the ship was luffing, and the collision took place, both vessels afoul of each other, and finally drifted right across the channel.

18th int. Did they go ahead any after they were in collision? Describe the movement.

Ans. Yes, sir; they went ahead thirty rods or more, and to leeward; they sagged to leeward at the same time, and brought up on the opposite beach.

19th int. How long after the collision before they were on the opposite beach?

Ans. Seven minutes, I should think.

20th int. After the schooner rounded the buoy at Nix's Mate, did you observe any change in her course before the collision?

Ans. No, sir.

21st int. When did you first think they would come in collision?

Ans. After I heard the order given on board the ship to luff.

22d int. What part of the channel were the vessels in at the time they came in collision?

Ans. The centre of the channel.

23d int. Look again at the chart, and see if you have got your mark for the place of the collision where you intended to put it.

(Objected to.)

Ans. The mark is in the direction, but not in the centre of the channel.

24th int. Will you now indicate as near as you can the place in the channel of the collision?

Ans. The dot indicates the place, which was inclined a little on the south side of the channel.

25th int. Does your business take you through the Narrows frequently, and how frequently, and for how long has it?

Ans. It takes me sometimes twice a day, in the summer months, sometimes once, sometimes three a day, during the five months of summer, and occasionally in the winter time; for fifteen years.

26th int. What had you been down for that day?

Ans. I had been carrying an officer of the government down to inspect Boston light.

Cross-Examination by H. A. Scudder, Esq., Proctor of Respondents and Appellants.

1st cross-interrogatory. What is your business?

Answer. A boatman.

2d cross-int. Will you swear you had your eyes on the schooner Empire from the time she rounded Nix's Mate to the time of the collision?

Ans. Alternately I had, on the ship and the schooner. I was sitting in a position where I could see either.

3d cross-int. Will you swear that the schooner did not change her course from the time she rounded Nix's Mate to the time of the collision?

Ans. I didn't perceive any movement different from her regular course.

4th Cross-int. Will you *swear* she did not?

Ans. I did not perceive any movement different from her regular course, steering right through there.

5th cross-int. Will you *swear* she did not change her course during the time referred to?

Ans. I think if there was any movement I could perceive it. I was in a position to perceive it if there had been. I did not perceive it. While I glanced round to look at the ship, if the schooner had then moved I should not then have perceived it. It was a short duration of time, not probably a moment; by canting my head one side or the other, I could see either, and I did not see her move from her regular course.

6th Cross-int. Was there any particular reason why you should watch the Empire all the while?

Ans. No, sir; nothing more than curiosity, looking at the vessels going by.

7th cross-int. Were there many vessels about there at the time, and how many?

Ans. There was another schooner I perceived going by after the collision, and a steamer, a towboat.

8th cross-int. How many vessels were then in sight, during the time referred to, when the schooner Empire was coming from Nix's Mate to the place of collision?

Ans. Only three.

9th cross-int. Did you watch them all, and could you swear to the exact courses of all?

Ans. I watched the ship and the schooner, and the steamboat in like manner?

10th cross-int. Do not vessels coming up the Narrows vary their courses according to the wind and tide?

Ans. Not in that part of the channel where the collision took place. Not with a leading wind. Further down the Narrows, they do, to get advantage of the tide. They hang to the windward all they can, if the wind is southwest, and an ebb tide.

11th cross-int. Which vessel did you watch most?

Ans. Both equally alike, not one more than the other. I was in a position where I could see both.

12th cross-int. Did you not have to look different ways?

Ans. By canting my head a little. I didn't have to change my position at all.

13th cross-int. Will you swear that you saw the ship luff before the collision?

Ans. I will.

14th cross-int. How much?

Ans. She luffed a point and a half.

15th cross-int. How much did you state in your testimony before the District Court she luffed?

Ans. I don't know how much I did say. It appears to me now and then that she luffed about a point and a half.

16th cross-int. Did you not then say "*a little grain—about a point?*"

Ans. I don't recollect.

17th cross-int. By what did you then say you knew she luffed?

Ans. By her sails.

18th cross-int. Was the tide setting up the Narrows at the time, or down?

Ans. The tide was setting up at the time. It was flood tide. The tide doesn't have much impression there. It sets up the other way, on the south side of the island, the strongest current.

19th cross-int. For which shore was the schooner heading at the time of the collision?

Ans. For the south shore—Gallup's island.

20th cross-int. How long before the collision had you noticed the schooner?

Ans. Fifteen minutes.

Direct Examination resumed.

1st direct interrogatory resumed? How many boats do you keep?

Answer. Fourteen, all told—me and my partner.

2d dir. res. How did the schooner head after passing Nix's Mate?

Ans. She was heading about southeast, southeast by south, part of the time.

3d dir. res. Was that her course up to the time of the collision?

(Objected to.)

Ans. I see no alteration.

4th dir. res. If the schooner's course had been altered after you first saw her, and before the collision, should you have noticed it?

Ans. I think I should.

5th dir. res. You say you could tell the ship luffed by her sails. How?

Ans. I could see the surface of her sail. As she approached me, before the collision, I could only see the leech of her sail. When she luffed I could see the surface.

JOHN QUINN.

June 1. Direct Examination resumed.

6th dir. res. Will you state whether or not the ship and schooner would have come in collision if the ship had not luffed, as you have stated?

(Objected to, for form and substance.)

Ans. It is my impression that the ship would have gone clear.

7th dir. res. Who was with you on your boat at the time? and where is he now, and if gone, how long has he been gone, and when to return?

Ans. Nathaniel Lannen was with me. I was informed a few weeks ago that he was gone a fishing. He has been gone about three weeks, I believe. I understood that he shipped for the cruise, bank fishing, for three or four months.

JOHN QUINN.

Deposition of George W. Childs.

1st interrogatory. State your name, age, residence, and occupation?

Answer. My name is George W. Childs; age, seventeen years in November next; residence, Cotuit Port; and I am a mariner.

2d int. How long have you been at sea? and in what capacities?

Ans. Four years; as hand and cook, in schooners between New York and Boston.

3d int. Are you now going to sea, and in what ship, and where?

Ans. I am; in the ship Nabob; bound to China.

4th int. Were you on board the schooner Empire at the time of a collision between her and the ship Marcellus in the Narrows of Boston harbor, in September last? and in what capacity?

Ans. I was; as cook.

5th int. State what was done on the schooner at the time or as soon as she had rounded Nix's Mate?

(Objected to, for form.)

Ans. The sheets were hauled chock aft.

6th int. What, if anything, was done on the schooner at the time she rounded Nix's Mate?

(Objected to.)

Ans. She was put close on the wind.

7th int. Did you see anything done to the sails of the schooner after, or as you passed Nix's Mate? Did you, yourself, assist in doing anything to them, and what?

Ans. Yes, sir. I helped trim them aft.

8th int. From the time the schooner passed Nix's Mate till the collision, how was she sailing, as to the wind?

Ans. Close down on the wind.

9th int. When did you first see the ship Marcellus? What called your attention to her, if you now remember?

Ans. I heard some noise on deck there, and I heard them say aboard the ship to luff.

10th int. Did you hear anything said on the schooner about a ship coming, before you saw the Marcellus?

(Objected to.)

Ans. Yes, sir. I heard the captain of the Empire say to the mate there was a ship coming, and to keep her up as nigh as she would go. The mate was at the wheel.

11th int. Where were you standing when you first saw the Marcellus?

Ans. Standing amidships, on the weather side.

12th int. Which way did you see her then, over which part of the schooner?

Ans. On her lee bow.

13th int. Did you hear more than one hail from the ship to the schooner?

Ans. Yes, sir, two or three.

14th int. Were they all the same?

Ans. Yes, sir.

15th int. As they came near each other, what, if anything, did you observe?

Ans. I observed the ship luffed a little; her bows slued.

16th int. When you saw her bows sluing, did you remain where you were then?

Ans. Yes, sir.

17th int. How soon did you move, and where did you go to?

Ans. As soon as I see she was coming into us. I then went forward.

18th int. What did you go forward for?

Ans. In order to get clear.

19th int. Did you think the vessels would come together before you saw this change in the ship's course?

(Objected to.)

Ans. No, sir.

20th int. From the time the schooner got her sails trimmed aft at Nix's Mate, was there any change in her course up to the time of the collision?

Ans. No, sir.

21st int. At the time of the collision, in what part of the channel were the vessels?

Ans. The weather side.

22d int. How far from the centre of the channel in your opinion?

Ans. A little to the weather.

23d int. Did the schooner move after the ship struck her, and how?

Ans. She moved broadside.

24th int. Which side of her was you standing then, and how could you tell?

Ans. I was standing on the weather side. I could tell because I could see the water foam.

25th int. Did you see the steam tug-boat pass the schooner before the collision?

Ans. Yes, sir.

26th int. Do you remember which side she passed you?

Ans. To the leeward side.

27th int. Did you hear any hail from her to the schooner as she passed, or at that time?

Ans. No, sir.

28th int. Have you been sick since ths collision?

Ans. Yes, sir.

29th int. How long was you sick, and what was the matter, and when was it?

Ans. Six weeks, with a fever. I was taken about the first of January.

Cross-Examination by H. A. Scudder, Esq., Proctor of Respondents.

1st cross-interrogatory. Had you ever been before the mast before the collision?

Ans. Yes, sir.

2d cross-int. How much?

Ans. About one or two years in schooners.

3d cross-int. Had you had supper before the collision?

Ans. Yes, sir.

4th cross-int. Did you cook it?

Ans. Yes, sir.

5th cross-int. How long had you been on deck before the collision?

Ans. Five minutes.

6th cross-int. Where had you been before that, and what doing?

Ans. I had been clearing up in the cabin and galley. We cooked on deck.

7th cross-int. With whom did you first talk about the collision after it took place, and when?

Ans. Mr. Littlefield, and Mr. Russell this morning.

8th cross-int. Had you talked with no one about it before?

Ans. No, sir.

9th cross-int. Where was it first told you that the sails of the Empire were trimmed aft after rounding Nix's Mate, and by whom?

Ans. The captain, just before we got to Nix's Mate. No one ever told me, because I helped trim them aft myself.

10th cross-int. Who told you first that the Empire was close-hauled on the wind after passing Nix's Mate?

Ans. No one ever told me.

11th cross-int. Has no one told you so lately?

Ans. No, sir.

12th cross-int. You say you heard them say on board the Marcellus to luff; how near were you to the Marcellus at that time?

Ans. Two or three ship's lengths off.

13th cross-int. Was it after you heard that hail that you heard your captain tell your mate there was a ship coming, and to keep her as nigh as she would go?

Ans. It was before that.

14th cross-int. How long before?

Ans. I should think between five and ten minutes.

17th cross-int. Was it before or after you passed the steamer?

Ans. Just after we passed her.

18th cross-int. How wide should you say the Narrows are where the vessels came together?

Ans. Between fifty and a hundred yards.

19th cross-int. And how near should you say your vessel was to the weather shore?

Ans. I should think she was about seventy-five feet.

Direct Examination Resumed.

1st direct resumed. Have you heard any other witness in this case testify, or do you know what any other witness has said?

Ans. No, sir.

GEORGE W. CHILDS.

Deposition of Henry Edwards.

1st interrogatory. State your name, age, residence, and occupation.

Answer. My name is Henry Edwards; age, sixty-one years; occupation, a merchant, and residence, Boston.

2d int. Did you see the schooner Empire after the collision referred to in this case, and how soon after?

Ans. I saw her within twenty-four hours after the collision.

3d int. Where was she then? Describe her situation.

Ans. She was sunk in the Narrows of Boston harbor. She was on the eastern side of the channel, on Lovell's island. Her stern was towards Lovell's island, and the taffrail on the stern was all that was visible of the vessel. I judged her stern was from fifty to sixty feet from dry land.

4th int. Do you know when the wreckers began to work on her in getting her up? and if yea, when?

Ans. She was sunk on Tuesday, and the wreckers were there during the night of Wednesday.

5th int. Did you see Capt. Cumminskey, of the steam tug boat Rescue, after the collision? and if yea, when?

Ans. I saw him on Friday, after the collision, at East Boston.

6th int. Who was with you? and where did you see him?

Ans. Mr. George Littlefield was with me, and we met Capt. Cumminskey below the Cunard steamers' dock.

7th int. Did Capt. Cumminskey then say anything about the collision between the Marcellus and Empire? and if yea, what?

(Objected to.)

Ans. He did. Mr. Littlefield stated to Capt. Cumminskey that he was one of the owners of the schooner Empire, and he wanted to know the facts in the case as they were, whether for or against him. Mr. Littlefield asked, what was the schooner doing when you passed her? His answer was, she was close-hauled. He then inquired, how long a time after you passed her before the collision? The answer was, six or eight minutes. Mr. Littlefield then asked, what part of the channel was the schooner in when you passed her? His answer was, he didn't know precisely, but judged she was about mid channel. After passing the schooner, before the collision, Mr. Littlefield asked, which way was the schooner standing? He answered, to the windward. Littlefield then asked, which way was the best water from the schooner? His answer was, to the leeward, and that his ship could have gone close to the shore. He then asked, was there room for the ship to have passed to the leeward of the schooner with safety to herself? He answered, there was. Littlefield again asked, being where you were, and seeing what you did, which vessel was to blame, if either? He answered, I do not like to say. That was the amount of the conversation. Other things were said, but nothing material that I can bring to mind.

8th int. Was there anything said about getting up the schooner Empire?

Ans. I think I told him that I had made arrangements with Mr. Gibson to raise her.

9th int. When did the wreckers go to work on her?

Ans. They commenced preparation Wednesday afternoon, and reached the wreck, I understand, Thursday morning about four o'clock. The conversation with Cumminskey was Friday, the day after.

10th int. Did either of you say anything to Capt. Cumminskey about employing him in any way about the schooner?

Ans. I think not.

11th int. Have you any recollection of any intimation being made to him in any way that you should wish to employ him about her?

Ans. I have not.

12th int. Did Capt. Cumminskey himself say anything about being employed about her, to your recollection?

Ans. No.

13th int. Did you make at any time any search for Nathaniel Lannen? and when?

(Objected to.)

Ans. I did, previous to the trial, and during the trial in the District Court.

14th int. Did you find him? and when?

Ans. I found him during the progress of the trial.

15th int. Was he produced at the District Court at the trial of this case?

(Objected to.)

Ans. He was.

16th int. Was he examined? and if not, why not?

(Objected to.)

Ans. He was not. It is my impression it was too late; after the evidence was closed.

17th int. Do you remember whether or not he was called on to the stand?

(Objected to.)

Ans. I think he was sworn.

18th int. Do you remember whether or not it was objected by respondent's counsel that it was then too late to examine him?

Ans. I remember that it was.

19th int. Whether or not he was got to court as soon as you could find him?

(Objected to.)

Ans. He was.

20th int. Have you looked for him again since the trial?

Ans. I have.

21st int. Have you found him? and if not, why not?

Ans. I have not. I understand he has gone to sea.

22d int. When did you first know he had gone to sea, or was going?

(Objected to.)

Ans. About three weeks since.

23d int. How soon after the respondents appealed in this case?

(Objected to.)

Ans. Immediately after.

Cross-examination, by H. A. Scudder, Esq., Proctor of Respondents.

1st cross-interrogatory. What time of day was it that you went down to see the Empire after the collision, as stated in your answer to interrogatory 3d?

Answer. I got there between three and four o'clock in the afternoon of Thursday. Tuesday the accident happened, Wednesday I got the wreckers to work, and Thursday I went down.

2d cross-int. Did you measure the distance between her and Lovell's island shore?

Ans. I did not.

3d cross-int. What interest have you in these cases? Have you not acted in the prosecution of them?

Ans. I have no interest whatever. I acted for the parties owning the sugar, the cargo of the schooner.

4th cross-int. Have you not acted in getting testimony and in procuring witnesses therein?

Ans. I have.

5th cross-int. And taken all possible means in so doing?

Ans. I have exercised the usual means and manner.

6th cross-int. What do you mean by usual means?

Ans. Exercised usual industry in seeking testimony.

7th cross-int. Did Cumminskey come to you, or did you go after him?

Ans. We went after him, Mr. Littlefield and myself.

8th cross-int. At what part of the conversation did you state, if at all, that Gibson was employed to raise the schooner?

Ans. Towards the close of the conversation.

9th cross-int. Was it not after this piece of information that he said he shouldn't like to say which vessel was in fault?

Ans. I think not.

10th cross-int. Did you not write down your answer to interrogatory 7th, before coming here to testify?

Ans. To refresh my memory, I sat down this morning and wrote down what I recollected.

11th cross-int. Who did the talking with Cumminskey, referred to in your answer to interrogatory 7th?

Ans. Mr. Littlefield carried on principally the conversation.

12th cross-int. Did you do any of it?

Ans. I did. I recognized him and commenced it.

13th cross-int. How long did that interview last?

Ans. Eight or ten minutes, and we walked afterwards towards the ferry together.

14th cross-int. Will you swear that you have stated the whole of it?

Ans. All that I recollect; all the material facts that I recollect. Certain things were impressed on my mind.

15th cross-int. Will you swear you have repeated the words used by each party, and all of them?

Ans. I have given the words as far as recollected, but substantially the purport of the conversation.

16th cross-int. Was, or not, the interview before the trial in the District Court?

Ans. It was.

17th cross-int. Did you or Mr. Littlefield summon Cumminskey to testify in the District Court?

Ans. I did not. I don't know what Mr. Littlefield did.

18th cross-int. Did you try to get him up before the District Court to testify?

Ans. No, sir. I never did. I don't know that anybody did.

HENRY EDWARDS.

Deposition of George Littlefield.

Taken in the case:

Hugh N. Camp et al.
v.
Ship Marcellus.

(The respondents object to the competency of the witness.)

1st interrogatory. State your name, age, residence, and occupation.

Ans. My name is George Littlefield; age, fifty-five years; residence, Wells, Maine, and a merchant.

2d int. Did you see the schooner Empire after the collision referred to in this case?

Ans. I did.

3d int. Have you any release from the libellants in this case? If yea, produce the same?

Ans. I have. The same is marked by the commissioner, "E. M., June 13, 1860," and is annexed.

4th int. Where was she? describe her situation?

Ans. She was in Boston Narrows, sunk there on Lovell's island, side of the channel. She laid stern towards Lovell's island, bows extending out. A little part of the stern taffrail rail was out of water when I was there.

5th int. How far was this taffrail rail from the shore?

(Objected to.)

Ans. I should judge it to have been sixty feet (although distances on the water are apt to vary to the wind from distances on the land. The reason why it differs is, that in passing an object on the water from a momentary view of it, the distance is about twice what it appears to be).

(The clause in brackets objected to, as irresponsive and incompetent.)

6th int. Do you mean to say, taking into view all this, that it was sixty feet?

(Objected to.)

Ans. I should; and if it varied at all to be more than that.

7th int. Will you give the length, breadth, and depth of the schooner, and of the ship Marcellus?

Ans. The schooner is eighty feet eight and a half inches long, and her breadth twenty-three feet four and a half inches, and her depth is seven feet and ten and three-quarter inches. Her registered tonnage is 129 51-95 tons. The ship Marcellus is one hundred and forty-nine feet long, thirty-one feet broad, twenty-two feet nine inches deep, and her registered tonnage is 659 and 65-95 tons.

8th int. Do you know Capt. Cumminskey, of the steam tug-boat Rescue?

Ans. I do.

9th int. Did you see him after the collision, and when and where, and who was present?

Ans. On Friday after the collision I saw him at East Boston, and there had an interview with him. Mr. Edwards was present, Mr. Henry Edwards. We three were all that were present.

10th int. Did he then say anything about the collision, and if so, what?

(The respondents object to all evidence of conversations between deponent and said Cunminskey.)

Ans. I asked him if he was captain of the tug-boat Rescue. He told me that he was. I inquired of him if he knew anything of a collision that took place down in the harbor the Tuesday previous. His reply was, that he was there and saw the whole transaction. I then told him that I was owner of the schooner. I then says to him, I want to get at the facts in the case relative to the collision, whether they be for or against me. He then stated like this. He said he went down to take that ship up,—the reply from the ship was, that the wind was too good and didn't want him. He said also, that he lingered about the ship a little while, and when approaching the Narrows he shot ahead of the ship; after passing some distance, he looked back and thought there would be a collision. I asked him why,—the reason why, he gave, was that the three vessels were on a range then, and if they didn't open to the right or left they must come together. I then asked him which way of the schooner he passed, he said to leeward. I asked him how the wind was, he said about southwest. I then asked him how long after he passed the schooner before the collision,—he says about six or eight minutes. I asked him what the schooner was doing when he passed her. He said she was close-hauled on the wind, standing down or outwards, I am not certain which. I then asked him, during the time between that and the collision which way the schooner would have been making; he says to windward. I then asked him what part of the channel the schooner was in when he passed her,—about mid channel, his reply was. I then asked him which way of the schooner the best water was, he said to leeward,—all the best water of the channel was way down by the leeshore there, that a ship could go right broadside against the beach, and her keel would be afloat in certain places in the Narrows. I then asked him if the ship could have passed him to leeward with safety to herself, he said that she could—room enough. I then says to him, being where you was, seeing what you did, which of those two vessels were to blame, if either. Says he, I don't like to say. That was all that was material at the interview at East Boston.

11th int. Do you now remember any other thing that was said relative to the collision or the circumstances of it?

Ans. I don't recollect that there was.

12th int. Was anything said about employing him about the wreck of the schooner in any way?

(Objected to.)

Ans. I heard nothing. I heard no such talk at all.

13th int. Did you make, or hear Mr. Edwards make any intimation to him that you would employ him in any way?

(Objected to.)

Ans. I am sure I did not, and I have no recollection that Mr. Edwards did, for the wreckers were already to work on the schooner at this time.

14th int. What day was you at the schooner?

Ans. Thursday.

15th int. Were the wreckers there then?

Ans. They were.

Cross-examination by H. A. Scudder, Esq., Proctor of Respondents.

1st cross-interrogatory. What interest had you in the schooner Empire at the time of collision?

Ans. Owner of one-half part.

2d cross-int. On what day did the collision take place?

Ans. The 27th of September, I think, on Tuesday.

3d cross-int. When did the wreckers go down?

Ans. When I went down I found them there. I think on inquiry I was told they came down that morning, very early in the morning.

4th cross-int. Was Mr. Edwards with you when you went down to her?

Ans. He was, when I went down to see her as stated.

5th cross-int. What time of day was it, if you recollect?

Ans. About four o'clock we were there in the afternoon.

6th cross-int. Had the schooner Empire a quarter deck?

Ans. Yes, sir.

7th cross-int. What is the height of the break between the quarter and main deck?

Ans. I should think about two feet and a half, or perhaps three.

8th cross-int. What is the height of the taffrail of the schooner Empire?

Ans. I should judge about two feet above the quarter deck.

9th cross-int. Where did the schooner Empire belong, and how long had Capt. Hutchins commanded her, and who commanded her before him?

Ans. She belonged at Wells, Maine. Capt. Hutchins had commanded her, I think, about a year and a quarter. Capt. Chambers, of Tippery, Maine, commanded her before Hutchins, and Capt. Jacobs before Chambers, and Capt. Weare before him.

10th cross-int. Do you know of more than one schooner Empire of Wells, Maine?

Ans. I do not. (I know there is another schooner Empire by seeing her name in the papers when I have left for my vessel. She was not of Wells, and had a master of a different name.)

(Clause in brackets objected to as not responsive.)

11th cross-int. Who had the most of the talk with Captain Cumminskey, you or Mr. Edwards?

Ans. I had most of the conversation, about all of it—I am not certain but the whole of it—about the collision.

12th cross-int. Was or not Mr. Edwards present at the time?

Ans. He was.

13th cross-int. At what part of the conversation did you say to him that you was the owner of the sunken vessel?

Ans. The first part of the conversation, as soon as I learned that he was master of the Rescue.

14th cross-int. Did you write down the conversation with him after it occurred?

Ans. I did not. It made pretty deep impression, however, on my mind at the time, as I felt a good deal of interest in the matter.

15th cross-int. Will you swear that you have repeated all his words, and yours to him, and the exact words, and in their exact order?

Ans. I will swear to that as near as I could to any conversation that might pass between me and any other person.

16th cross-int. Why did you say you had repeated all that was "*material?*"

Ans. What I meant by that was, all that we talked about the collision. We might have talked about the weather, and other things.

17th cross-int. Did you subpœna him to testify in the court below?

Ans. I did not.

18th cross-int. Was he summoned at all on the part of the libellants in the District Court?

Ans. No, sir.

19th cross-int. Did you or not state to your counsel that you had had an interview with him before that trial in the District Court?

Ans. I had.

20th cross-int. And did your counsel cause him to be summoned as a witness?

Ans. No, sir, not that I ever knew of.

21st cross-int. Have you stated all the conversation you had with him before the trial in the District Court?

Ans. I have not. I have stated what occurred at this interview at East Boston.

22d cross-int. Had you any other interview with him besides that before the trial in the District Court?

Ans. I had.

23d cross-int. Have you repeated the words at that interview?

Ans. I have not.

24th cross-int. Have you been advised not to repeat them?

Ans. I have not.

25th cross-int. Have you stated the words of that interview to your counsel?

Ans. I have.

26th cross-int. How many interviews did you have with him before the trial in the District Court?

Ans. Two, and two only.

27th cross-int. At the other conversation with Capt. Cumminskey, which you have not seen fit to repeat, was anything said about the collision?

Ans. There was.

Direct Examination Resumed.

1st direct interrogatory resumed. Have you been asked while now giving your testimony to state what was said by Captain Cumminskey in the second interview?

Ans. I have not.

2d dir. res. Will you state it if Mr. Scudder, the respondents' proctor, asks for it?

Ans. I will.

3d dir. res. When you were at this wreck of the schooner Empire, on Thursday, as you state, what had been done by the wreckers at that time, and what were they then doing?

(Objected to.)

Ans. They were then getting ready to raise this wreck. They had one lighter along on one side, and another lighter on the other side, and were laying spars across all three of the vessels, the two lighters on the outside, and the sunken one between. After the spars were placed, there were fixed large chains on these spars, passing under the wreck, to confine these lighters down at the lowest position at low water, so that the flow of the tide may flow the wreck just the height that the tide flows.

4th dir. res. Whether or not at that time they had got the chains under the schooner?

Ans. They were getting chains down under the forward part. The spar across the stern they hadn't got across.

5th dir. res. Whether or not they got so far along as to move the schooner at all?

(Objected to.)

Ans. They had not.

6th dir. res. Had they moved the schooner when you were there?

(Objected to.)

Ans. They had not.

7th dir. res. Whether or not when you were there, they had got the chains under so as to move the schooner at all?

(Objected to.)

Ans. They had not.

8th dir. res. How long after the first interview at East Boston, of which you have testified, was the other interview of which you have spoken?

Ans. Some eight or ten days.

9th dir. res. Was Nathaniel Lannen called as a witness in the District Court? and if yea, by whom? Did he testify, and if not, why not?

Ans. He was, by the libellants. He did not testify, because we could not find him until we had got all our testimony in on our side, and it was all in on the other side I am very positive, and the court ruled him out because he was too late, I think. The other side objected to his testifying.

GEORGE LITTLEFIELD.

"*E. M., June* 30, 1860."

Know all men by these presents, that we, Hugh N. Camp, Edward W. Brunsen, and Charles Sherry, Junior, of New York, merchants and partners, under the firm of Camp, Brunsen & Sherry, in consideration of one dollar to us paid by George Littlefield, of Wells, in the State of Maine, trader, and late owner or part owner of the schooner Empire, late of said Wells, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever and fully discharge said Littlefield of and from all claim, demand, liability, whether in law, equity, or admiralty, and all possibility of claim or demand, growing, or in any way arising, or that by any possibility can arise out of a collision between said schooner and the ship Marcellus, in the Narrows, or entrance of Boston harbor on the twenty-seventh day of September last, while said schooner was on her voyage from Boston to Bristol, with a cargo of sugars on board, belonging to us.

Witness our hands and seals, this sixth day of June, in the year of our Lord one thousand eight hundred and sixty.

HUGH N. CAMP,
E. W. BRUNSEN,
CHARLES SHERRY, JR.

In presence of
GEO. ROBERTSON,
EZRA CHESEBRO,
F. L. WILLIAMS.

TESTIMONY OF CLAIMANTS, TAKEN AFTER APPEAL.

Deposition of George Williamson, May 23.

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is George Williamson; age, thirty-six years; residence, Boston; and I am a pilot.

2d int. Are you not a commissioned pilot? If so, how long have you been such pilot? Please produce your commission to the magistrate?

(Objected to.)

Ans. I am a commissioned pilot, and have been about sixteen years. I will produce my commission to be identified. It is identified by the commissioner, marked E. M., May 28, 1860.

3d int. What kind of pilot are you—for what places?

(Objected to.)

Ans. For Boston harbor and bay.

4th int. Were you such at the time of the collision between the Marcellus and Empire, referred to in this case?

(Objected to.)

Ans. I was.

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5th int. Were you or not on board the ship Marcellus at the time of the collision with the schooner Empire, referred to in this case?

Ans. I was.

6th int. In what capacity?

(Objected to.)

Ans. As pilot.

(The libellants here objected to the competency of the deponent as a witness.)

7th int. Whether or not you have, before testifying in this case, received any release from the owners and claimants in this case? If so, please produce the same.

Ans. I have, and produce the same, and the same is marked No. 1, E. M., by the commissioner, and is annexed.

8th int. Where did you take charge of her, and how? State the circumstances?

Ans. I took charge of her thirty miles from Boston Light. I think I hailed the captain and asked him to take a pilot; but will not be certain whether, knowing it to be a pilot boat, he did not heave-to before I hailed him.

9th int. What did you do with her?

Ans. I proceeded to Boston with her—filled away and came to Boston. I took charge as pilot.

10th int. Who had charge after you went on board, and while you were on board?

Ans. I did. The captain gave up charge to me.

11th int. Were you or not on board at the time of the collision referred to in this case? If yea, state where it happened?

Ans. I was. I had charge. It happened in the Narrows, very near abreast of Lovell's island point.

12th int. At what time of day did it occur?

Ans. About half past seven in the evening, I should think.

13th int. On which side of the Narrows was the Marcellus at the time?

Ans. On Lovell's island side.

14th int. How had you the wind?

Ans. About southwest.

15th int. Which shore were you nearest—windward or leeward?

Ans. The lee side—Lovell's island.

16th int. Had or not the wind changed before the collision? If so, how, and how long before?

(Objected to.)

Ans. It had changed from south, southwest. It changed about the time I was abreast of the Hardings, about three miles outside of Boston Light. The wind had been to the east, and hauled round from the east by the south to southwest.

17th int. How were your yards at the time of the collision, and how long had they been so?

Ans. They were braced up sharp, and had been ever since I had passed Point Alderton, a little outside of Boston Light.

18th int. What is the distance across the Narrows at and near the place of the collision? and how is the water on each side?

Ans. Where the vessels struck, the Narrows are 370 feet across. The water is bold on both sides, but on Lovell's island side rather the bolder of the two.

19th int. How long had you been sailing up the Narrows, and how near the leeward shore? State particularly.

(Objected to.)

Ans. I had come close to the lower point of Lovell's island, and shaped my course for the upper point of Lovell's island. I passed the lower point within twenty or thirty feet, I think, and passed the upper point within forty feet, I suppose. I didn't pass it, because I stopped on it before I got by.

20th int. Is there any customary way of passing through those Narrows with the wind as it then was? If so, what?

(Objected to.)

Ans. Yes, sir. We port our helms. We keep nearest to Lovell's island with the wind that way.

21st int. How is it going down the Narrows, with the wind in that direction?

(Objected to.)

Ans. We keep on the Gallup island side.

22d int. As to passing vessels, which side of them do you go?

(Objected to.)

Ans. With the wind the same, in going down I should keep on Gallup island side, and in coming up, on Lovell island side.

23d int. What is the custom (if any) in that respect?

(Objected to.)

Ans. In passing down, to keep on Gallup island side, and in coming up, to keep on the other side, with the wind southwest.

24th int. Where were you on board the Marcellus at and before the collision?

Ans. I was on the house on her poop deck, six or eight feet from the helm, and above it.

25th int. How were the sails of the Marcellus as to seeing ahead?

Ans. The lee clew of the mainsail I hauled up on purpose so that I could see ahead and have no obstruction.

26th int. Did you or not see the Empire before the collision? If so, when, and where, and how long before the collision?

Ans. I saw her when she was rounding Nix's Mate, and before she got to it. It might have been fifteen or twenty minutes, I should think, before the collision. She was then about a mile from the Marcellus.

27th int. How did she bear, on which bow, if either, and how much, when you first saw her?

Ans. Half a point on my weather bow, which was my port bow. By compass she bore N. W. half north, I should think, but am not certain.

28th int. What is the course through the Narrows, with the wind as it was?

Ans. Northwest by north, if I am in the centre of the channel.

29th int. How was the wind for vessels passing each way at the time?

Ans. It was as free for one as it was for the other. She would steer southeast by south, and we northwest by north.

30th int. How many points free for each?

Ans. A schooner would lay much nearer the wind than a square-rigged vessel. She would have the wind freer than we would. The ship would have it, perhaps, two points free, and the schooner would have it three points free.

31st int. Could or not the Marcellus with safety have gone nearer the lee shore than she did at the time?

Ans. No, sir, she could not.

32d int. Was there or not room for a vessel coming down the Narrows to have gone between her and Lovell's island?

Ans. No, sir, there was not.

33d int. Was or not the Marcellus, in passing through the Narrows, and before the collision, sailing in the usual and customary course and manner?

Ans. Yes, sir.

34th int. At the time of the collision, how near was the Marcellus to the lee shore?

Ans. Forty feet. Not over forty feet.

35th int. How near the shore at that place is it customary for ships to go in coming up, with the wind as it was?

(Objected to.)

Ans. That is near enough for any vessel to pass there on a lee shore; and that is as near as they generally go.

36th int. Was it or not safe for her to go any nearer?

Ans. No, sir.

37th int. When you first saw the schooner Empire, how was she heading, and what was she doing, and how did she come?

Ans. She was rounding Nix's Mate when I first saw her. After rounding, she did not come on to her regular course, but gradually dropped off on the lee bow of the ship. She dropped about half a point, I should think, on my lee bow.

38th int. State what you saw of her down to the time of the collision; what course or courses she steered, whether free or close-hauled, and how she came?

Ans. She was coming free. She kept off. She was half a point on my weather bow, and ran across on my lee bow. That is all I saw of her till we hailed. When we hailed she altered her course;

she luffed. The mate of the ship hailed the schooner and told her to luff; she luffed, and we struck her amidships, about.

39th int. Did or not the Marcellus change her course before the collision? If so, how?

Ans. Yes, sir; the order was given to port, by me. The ship was falling off; the helm *was* ported.

40th int. When you first saw the Empire, how did she appear to be going, to the windward or leeward of you, or how?

Ans. She appeared to be coming to the windward of me.

41st int. Might she or not then have gone to the windward of you?

Ans. She could have gone to the windward of us.

42d int. How far?

Ans. She could have gone one hundred feet or more.

43d int. Was there or not any difficulty in her so doing?

Ans. No, sir.

44th int. How should she have gone?

Ans. She should have gone to the windward of us.

45th int. Did she or not change her course after that? If so, how?

Ans. She did; she kept off.

46th int. How far from you was she when she so kept off?

Ans. She might have been quarter of a mile perhaps.

47th int. How did she then appear to be going, to the windward or leeward of you, or how?

Ans. To the leeward, across our bow.

48th int. What, if anything, was then done on board of your vessel?

Ans. I ordered the mate forward to hail the schooner and tell him to luff.

49th int. How far off was she then, and could she then have luffed and gone to windward of you?

Ans. She was then about quarter of a mile from us; I don't know as she was quite as far, but I think she was, when the mate went forward. She could then have luffed and gone to windward of us.

50th int. Did the mate hail her? if so, what was the hail?

Ans. The mate hailed her and told her to luff.

51st int. Could the schooner or not then have luffed and gone to the windward of you?

Ans. She could.

52d int. Was there or not any difficulty in the way of her so doing?

Ans. No, sir.

53d int. Did she *then* luff?

Ans. She did not *then;* she did some time after he hailed her.

54th int. How long after?

Ans. Perhaps on the third or fourth hail she begun to luff.

55th int. At the time she did luff, was it possible for her to clear your vessel?

Ans. No, sir.

56th int. Why not.

Ans. She didn't begin in season to luff.

57th int. How much did she luff?

Ans. I should think she luffed four points.

58th int. What was the effect of this luffing?

Ans. She luffed right up across us.

59th int. What, if anything, was done on board the Marcellus to avoid her?

Ans. The helm was ordered to be put to port. It was put to port, and the ship began to fall off.

60th int. Why was not the Marcellus kept off more?

Ans. Because I got down as near to the beach as I could go.

61st int. Did or not the Marcellus luff at all before the collision?

Ans. No, sir.

62d int. When the order for the schooner to luff was given on board your vessel, what, if any, change was made in the helm of the Marcellus? State the circumstances, and if any change was made in your helm, what was the effect?

Ans. The man at our helm let go of the wheel, and let it fly amidships. There was no change in the ship's course. The moment he let fly the ship's helm, I was standing on this house, and I jumped down and caught the helm from the man and heaved it up. Capt. Donnell, a passenger in the Marcellus, also caught hold of it, and helped me heave it up. I don't think the ship's course was altered at all. I *know* it was n't. I hove the ship's helm hard up, and she was falling off when she struck the schooner.

63d int. Just before the schooner luffed, how did she appear to be heading, to the leeward or windward of your vessel, or how?

Ans. Heading to leeward of her.

64th int. Could she have gone to the leeward and between you and the lee shore?

Ans. No, sir.

65th int. Why not?

Ans. There was not room between the Marcellus and the land.

66th int. How long before the collision did the schooner begin to luff?

Ans. I should think she was within four or five times of her own length from the ship when she began to luff. I was not on the forecastle at the time, and couldn't tell as to the distance.

67th int. When you struck her, how was she heading?

Ans. About southwest, for Gallup island's shore. She had luffed about four points, I should think. I struck the schooner about amidships.

68th int. Did she or not luff into the wind before you struck her?

Ans. Yes, sir. She was right head to wind.

69th int. When you jumped to the wheel, was it in motion or at rest, or how? State particularly?

Ans. It was flying down.

70th int. How long after the man at the wheel let go of it, was it that you got hold of it?

Ans. The very instant that he let go of the wheel I jumped down and grabbed it, and hove it up on the instant. Capt. Donnell stood there, and he caught hold of it at the same time, or about the same time. He had hold of it with me.

71st int. Did or not the steamer Rescue pass you a short time before the collision?

Ans. Yes, sir.

72d int. After she passed you, how were your relative courses?

Ans. The steamer's was the same as mine. She was on my weather a grain.

73d int. Did you see the steamer pass the Empire? If so, state the circumstances.

Ans. I saw her when they passed. The steamer had passed the point before she passed the Empire. After the steamer passed us, she came up to the schooner; the schooner kept keeping off for the steamer, instead of luffing as she ought to have done. They commenced hallooing on board the steamer or schooner, I couldn't tell which. I then gave my orders to port, and kept as close to the beach as I considered safe to go. I considered that my side of the channel to go on, to leeward. After they had got through that hallooing, the ship's mate was hailing him to keep his luff, or to luff. The schooner made some reply back to the mate. I couldn't tell what it was.

74th int. In passing the schooner did the steamer keep her course, or luff, or keep, or how? State particularly.

Ans. She ported her helm; that is, she kept off. She was broadside to me. I should think she kept off three or four points.

75th int. When the steamer passed the schooner, how did she range from, as to the point on Lovell's island?

Ans. Across the point; I should think the length of the ship on the land.

76th int. How near each other did they pass?

Ans. They passed very close, but I couldn't tell how near.

77th int. At that time, how did the schooner Empire range as to Lovell's island point?

Ans. She ranged about a ship's length over the point. She was running down, keeping off, and the steamer keeping off.

78th int. If the Marcellus had luffed when the wheel flew amidships, were you in a position to notice it?

Ans. Yes, sir.

79th int. Where was the Marcellus when the collision took place?

Ans. About abreast of the point.

80th int. What became of the vessels?

Ans. I struck her amidships and crowded her on to the point. Her stern took the point and her bow sunk. The ship took the beach.

81st int. How soon did the ship take the beach, and how far did she go before she took the beach?

Ans. She took it almost instantly. We were about forty feet from the beach when I struck the schooner.

82d int. In your opinion, upon the facts stated by you, through whose fault did that collision take place?

(Objected to.)

Ans. I should think it was on the part of the schooner, for if he had luffed and kept his side of the channel, the collision couldn't have occurred.

83d int. Upon all the facts, as you observed them at the time of the collision, through whose fault did that collision take place?

(Objected to.)

Ans. I should think it was on the part of the schooner.

84th int. Could or not the Marcellus have done anything more than she did do to avoid the collision? if so, what?

Ans. She could not have done anything.

Cross-Examination by T. H. Russell, Esq., Proctor of Libellant, who, not waiving the competency of the witness, puts the following Cross-Interrogatories, de bene.

1st cross-int. Describe the course of the channel through the Narrows, from opposite Point Alderton.

Ans. The course is west, half north, from Point Alderton to Spit Light,—from the berth by the buoy at Point Alderton. From the Spit Light to Lovell's island's lower point the course is northwest; then, through the Narrows, it is northwest by north up to Deer island.

2d cross-int. Do you mean those are the courses a ship would steer in coming in?

Ans. That depends upon the wind. With the wind southwest, I should steer those courses.

3d cross-int. With the wind south-southwest, would they be different?

Ans. No, sir.

4th cross-int. Were those the courses you steered the night of the collision?

Ans. Yes, sir, about. I was steering by the wind, and might have kept a little more up; that is, I kept up all I could—that is, before I get to the Narrows; then I keep the ship off and go free.

5th cross-int. When did you begin to go free? at what point?

Ans. Abreast of the Spit light, at the entrance of the Narrows.

6th cross-int. How near the buoy, at Point Alderton, did you pass?

Ans. Within a ship's length of it, say.

7th cross-int. Suppose a line drawn from a point twenty feet from the lower point of Lovell's island to forty feet from the upper point, how far would it be from dry land on Lovell's island in the centre?

Ans. Perhaps it would be two hundred feet. I don't know certain. I never measured it. It makes in with a deep bend there.

8th cross-int. Did you come up that night in the usual course of ships of the size of the Marcellus coming in with the wind as it was that night?

Ans. Yes, sir.

9th cross-int. How deep is the water in the Narrows? How on the Lovell's island shore? How near the upper point could a vessel go, drawing, say, ten feet of water, say at high and at low tide?

Ans. Five fathoms in the centre of the Narrows. It is bold off the upper point of Lovell's island. At high tide, such a vessel could go, perhaps, within forty feet; and in low water, perhaps within twenty feet. That is, you could carry the amount of water necessary for the ship, but it would be too near for the ship to steer by—I mean the Marcellus.

10th cross-int. How much did she draw at that time?

Ans. Sixteen feet.

11th cross-int. Where was the schooner Empire when you first saw her? State precisely.

Ans. Rounding Nix's Mate. She might have been a little above; but the first I noticed of the schooner she was rounding Nix's Mate.

12th cross-int. Did you watch her till she had rounded it?

Ans. Yes, sir.

13th cross-int. From that time to the collision, where were you on the Marcellus?

Ans. Standing on a house which comes up through the poop deck. When I first saw the schooner, I was standing to leeward on the ship's poop; and when I saw the schooner keeping off with the steamer, I got on to the house, and sent the mate forward. I told the mate that that schooner seemed to be going to get into trouble, or something to that effect, and I told the mate to go forward and see what he was doing. I remained on the house till the man let go of the wheel, when I went to the wheel, as already stated. I hove the wheel up, and then jumped back again on top of the house, and was on the house when the vessels struck.

14th cross-int. Where was the Marcellus when you first saw the schooner rounding Nix's Mate?

Ans. She was two-thirds of the way, or more, from Point Alderton up to Spit light.

15th cross-int. Had the Marcellus all sail set, with the exception of the lee clew of the mainsail, as you have stated?

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Ans. She had.

16th cross-int. Had she or not a rising bow, or how otherwise?

Ans. She had not. I think she is a very straight ship, although I may be mistaken. I know she trims on even keel, or very near it.

17th cross-int. From the time you saw the schooner Empire rounding Nix's Mate to the collision, did you lose sight of her at any moment?

Ans. Yes, sir. She dropped down on my lee bow.

18th cross int. When did you lose sight of her entirely, and when of her hull? Where did you stand?

Ans. When she was right ahead of me. I was on the house on the poop. I lost sight of both at once. Then she opened on my lee bow.

19th cross-int. Could you see her when you were standing on the poop—the whole of her?

Ans. Yes, sir.

20th cross-int. Why did you get up on the house then?

Ans. So that I could have better command of my vessel, and see the schooner better, and see my men on deck.

21st cross-int. What obstruction in the way of seeing the schooner as you stood on the poop?

Ans. None whatever.

22d cross-int. Then there was no reason for you to get on the house, either the first or second time, so far as the schooner was concerned?

Ans. No, not on the part of the schooner. I got up there, as I said before, to overlook the man at the wheel, to have better command of my ship, and to see better the men on deck. One naturally gets on to the highest place in such a case as that.

23d cross-int. Had you been standing on the house before this time, after you went on to the Marcellus?

Ans. Yes, sir, I think I had. I won't be confident whether I had or not?

24th cross-int. Do you say, then, the only reason you had was to see the men on the ship, and not to get any better sight of the schooner?

Ans. No, I do not say I did not get up there to see the schooner, though I could see the schooner as well on the poop as I could up there.

25th cross-int. How near the wheel were you before you got on the house?

Ans. From five to seven feet; in that vicinity.

26th cross-int. How much nearer when you got on the house?

Ans. No nearer; about the same distance.

27th cross-int. When the schooner opened, as you say, on your lee bow, state how much on your lee bow; and where was she then in the channel, and where the Marcellus?

Ans. She was half a point on our lee bow, on the lee side of the channel. She was above the upper point, perhaps two-thirds of the way from Nix's Mate to Lovell's island upper point. The Marcellus was down about abreast of the lower point, or below, perhaps; I couldn't tell exactly.

28th cross-int. Was this where the two ships were when you sent the mate forward?

Ans. It was previous to that I sent the mate forward. The Marcellus was about at the entrance to the Narrows when I sent him forward.

29th cross-int. When you sent him forward, how did the schooner bear from the Marcellus? over what part?

Ans. On the weather-bow, keeping off; that is why I sent him forward.

30th cross-int. After the mate went forward, what did he do?

Ans. He hailed the schooner and told him to luff.

31st cross-int. How soon after he got forward?

Ans. It might have been four or five minutes, but I am not positive as to that. It is so long since that I have forgotten how long it was.

32d cross-int. Did the mate run when he went forward, or walk?

Ans. Walked, I think.

33d cross-int. What did the schooner reply to his hail?

Ans. I could not understand it. The mate's answer to me was, that the schooner said "luff, you;" and my answer was, no, tell him to luff.

34th cross-int. How many times did the mate hail the schooner?

Ans. From three to five times; I couldn't tell exactly.

35th cross-int. Did the mate hail you after hailing the schooner?

Ans. Yes, sir. He made a reply, and said, the schooner says "luff, you," or something to that effect. I think those were the words.

36th cross-int. Was that all the mate hailed you before the collision?

Ans. No; when he first went forward he hailed "all right, sir, she is going to the windward of us." Then he immediately, or soon after, says, she is keeping off, and I said, tell him to luff.

37th cross-int. When the mate of the Marcellus hailed you, as you say, as to the luff, what was done, if anything, at the Marcellus' wheel?

Ans. The helm was put to port. I gave the order "hard to port," and it was put there.

38th cross-int. Who put it there?

Ans. The man at the wheel.

39th cross-int. What was done at the wheel of the Marcellus, after that, and before the collision?

Ans. The ship was pointed, as near as I dare go, to the upper point. Then I gave the word steady, sooner than run the ship on the beach. When the mate hailed the schooner, as we drew near the schooner, just before we struck the schooner, I gave the word *port* again. When the mate hailed the schooner, the man at the wheel let it fly amidships; it was mistaken at our wheel. I jumped immediately off the house, caught the wheel with Capt. Donnell, and hove the wheel up.

40th cross-int. Whose mistake was it, letting the wheel fly amidships?

Ans. I do not know. The man at the wheel, probably, if there was any mistake. But it made no odds to the ship. She did not luff a grain.

41st cross-int. Was it right to let the wheel fly amidships, or did you give any such order?

Ans. No, sir, to both branches of the question.

42d cross-int. Then what right had the man to let it fly?

Ans. He had no right, unless he done it to keep the ship steady. He had no right to let it go without an order, of course. (The man at the wheel might have let it fly because he thought the ship was too near the beach.)

(Libellant objects to clause in brackets as irresponsive.)

43d cross-int. Then was it not a mistake in him in so doing?

Ans. I cannot tell whether he did it to keep the ship from going on to the beach, or whether it was a mistake.

44th cross-int. Was it your business or the man's at the wheel to alter the course of the ship so as to keep her off the land?

Ans. It is my business to give the orders to keep her clear of the land, but if the man at the wheel gets frightened at the land, he might in that case let the wheel fly.

45th cross-int. Now if a man at the wheel gets frightened at the land, as you say, and lets the wheel fly without orders, is that, in your judgment, an error on his part?

Ans. It is disobeying an order. It may be an error. He probably thought I was going to run the ship ashore, and rather than do that he probably let the wheel fly.

46th cross-int. Is it or not, in your judgment, an error, or mistake, in a sailor to undertake to change the course adopted by a pilot in charge of a vessel as you then was, in that way?

Ans. He did not change it. It might be an error. I think it was an error in him, or something of that kind.

47th cross-int. If it was not a mistake in the man, in fact, to let the wheel fly, why did you at once jump down and put it back?

Ans. To prevent the ship from luffing. The ship after a certain time would have luffed.

48th cross-int. If it had remained amidships it would then have been a mistake, would it not?

Ans. If it had remained amidships it would have been a mistake.

49th cross-int. If it had been put down, would it then have been a greater mistake?

Ans. Yes, sir. It would have put the ship ashore on the weather side.

50th cross-int. How fast was the Marcellus sailing? Was the water smooth, or how otherwise?

Ans. I think the ship was going about eight knots. It is so long since the circumstance that I have partly forgot. It was perfectly smooth at the time.

51st cross-int. Could you see the schooner when you was hold of the wheel?

Ans. Yes, sir.

52d cross-int. Do you say you saw the schooner luff just before the collision?

Ans. I saw her jibs coming out by our jibs *from* the lee bow. I know she luffed.

53d cross-int. How do you know?

Ans. Because she had altered her course four points.

54th cross-int. Where was you standing when you saw her jib come out by your jib?

Ans. On the house on the poop, on the weather side. This house rises up through the poop, making a part of the cabin, and leaves a passage way on each side of the poop. The width of the house across is about fourteen feet, I should judge, and it is longer fore and aft. I was standing about amidships, a little on the weather side.

55th cross-int. Do you mean to say you know the schooner luffed because when you saw her jib come out by yours she was *four* points off the course you before saw her on?

Ans. Yes, sir.

56th cross-int. How was the tide?

Ans. An hour flood,—young flood.

57th cross-int. As the wind was that night, if the rudder was just amidships, which way would the ship go?

Ans. After awhile she would luff.

58th cross-int. Was it then necessary to keep the wheel more or less up to keep her on her course?

Ans. Yes, sir.

59th cross-int. When did you first expect the vessels would come in collision?

Ans. When I first saw her I thought she was acting very odd, and therefore sent the mate forward? I first expected they would come in collision when they were three ships' length apart.

60th cross int. Do you think the schooner had the wind free?

Ans. Yes, sir, I know she had.

61st cross-int. Your testimony is given on that belief, is it?

Ans. Yes, sir.

62d cross-int. When the mate went forward and said, "all right," &c., which way was the schooner heading?

Ans. She was on our weather bow and heading for us, or a grain to windward of us.

63d cross-int. When you next saw her, how was she heading?

Ans. She was keeping off across our bow to leeward. The mate hailed and says she is keeping off, and I tell him to tell her to luff.

64th cross-int. Did you tell the mate before he went forward to tell the schooner to luff?

Ans. No, sir. I told him to see what that schooner was doing.

65th cross-int. After you jumped down and put the wheel hard up, did the ship fall off before the collision?

Ans. Yes, sir, she was falling of at the time of the collision?

66th cross-int. How much had she fallen off when the collision occurred, do you think?

Ans. A quarter of a point; from that to a half.

67th cross-int. Did she appear to mind her helm quickly?

Ans. Yes, sir.

68th cross-int. How far was the steamer from the Marcellus when the steamer passed the schooner?

Ans. The steamer and schooner were about abreast of the 74 bar; both keeping off down towards the bar, and a short quarter of a mile from the ship.

69th cross-int. How long is the Marcellus, and how wide?

Ans. I don't know, and I don't know her tonnage. I should think she was about five hundred tons, about one hundred feet long, and perhaps twenty-eight feet wide. I am guessing at all these measures.

70th cross-int. How far was the schooner from the ship when the mate first hailed her?

Ans. A short quarter of a mile.

71st cross-int. Did you heave the ship's sails aback after the collision?

Ans. Yes, sir, when I came off from the shore after the collision, I tried to get the maintopsail aback before taking the beach, but I could not get it aback. Then I let it remain after I took the beach, to keep her on.

72d cross-int. Who took hold of the wheel first, you or Capt. Donnell?

Ans. I think I did, but I won't be certain about that. We both jumped at the wheel.

73d int. Did you give the man any order to hard up the wheel before you jumped at the wheel, or at the time?

Ans. I jumped instantly for the wheel, when it was let go, and before it had done swinging, I had hold of it. I might have said something, as I hove the wheel.

74th cross-int. Why did you jump at it so quick?

Ans. Because I knew I must keep our ship straight. If it had been left so, after a time the ship would have luffed. I had land and the schooner ahead of me, and of course I had to keep clear of them.

75th cross-int. Where did the ship ground after the collision?

Ans. A very little by the point,—a grain above the upper point.

76th cross-int. Have you testified before in this case?

Ans. Yes, sir.

77th cross-int. Did you then think that you saw the steamer when she passed the schooner?

Ans. Yes, sir. I think I did.

78th cross-int. When you told the mate to tell the schooner to luff, where was he and where you?

Ans. I was on the house in the poop, and the mate forward on the topgallant forecastle.

79th cross-int. In whose hands did you leave the wheel, when you got on to the house the second time?

Ans. The man at the wheel.

80th cross-int. Was Capt. Donnell hold of it when you left it?

Ans. I think he was.

81st cross-int. Did you give any orders about the weather braces before you struck the schooner, or about the time, and when?

Ans. I gave the order to haul in the weather main brace, I think, about the time I struck the schooner.

GEORGE WILLIAMSON.

No. 1, *E. M.*

Know all men by these presents, That we, William Dillaway, Charles H. Dillaway, and John A. Baxter, of Boston, in the county of Suffolk, Josiah Gorham, Alexander Baxter, Sylvester Baker, Jr., James B. Crocker, and John Gorham, of Yarmouth, Sylvester Baxter, Asa Lothrop, Owen Bearse, Robert B. Hallett, and Thatcher Hinckley, of Barnstable, in the county of Barnstable, claimants and sole owners of the ship Marcellus, for and in consideration of the sum of ten dollars to us paid by George Williamson, of Boston, in the county of Suffolk, pilot, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged, and we do hereby, for ourselves, our heirs, executors, administrators, and assigns, remise, release, and forever discharge, the said George Williamson, his heirs, executors, and administrators, of and from all debts, claims and demands, doings, omissions, damages, actions, and causes of action, and all liabilities whatsoever, pertaining or in any way relating to the recent collision between the said ship Marcellus and a certain schooner called the Empire, touching which a suit is now pending in the District Court of the United States, within and for the district of Massachusetts.

In witness whereof, we, the said William Dillaway, Charles H. Dillaway, John A. Baxter, Josiah Gorham, Alexander Baxter, Sylvester Baker, Jr., James B. Crocker, John Gorham, Sylvester Baxter, Asa Lothrop, Owen Bearse, Robert B. Hallett, and Thatcher Hinckley, have hereto set our hands and seals this twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM DILLAWAY. [SEAL.]
CHARLES H. DILLAWAY. [SEAL.]
JOHN A. BAXTER. [SEAL.]
JOSIAH GORHAM. [SEAL.]
ALEXANDER BAXTER. [SEAL.]
SYLVESTER BAKER, Jr. [SEAL.]
JAMES B. CROCKER. [SEAL.]
THATCHER HINCKLEY. [SEAL.]
JOHN GORHAM. [SEAL.]
SYLVESTER BAXTER. [SEAL.]
ASA LOTHROP. [SEAL.]
OWEN BEARSE. [SEAL.]
ROBERT B. HALLETT. [SEAL.]

Signed, sealed, and delivered,
in presence of

Deposition of John Thompson.

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is John Thompson; age, thirty-two years; residence, Boston; and am an agent—running a boat, getting jobs for stevedores.

2d int. Did you or not see the collision between the ship Marcellus and schooner Empire, referred to in this case?

Ans. Yes, sir.

3d int. Where were you, and how came you there?

Ans. I towed down alongside of the Rescue, when she went down to speak to the ship. I was, at the time of the collision, on a schooner on the weather quarter of the ship, about sixty-five or seventy-five feet from the ship.

4th int. Was or not said schooner running the same course with the Marcellus?

Ans. Yes, sir.

5th int. If the Marcellus had stopped, and your schooner had gone on her then course, how near the Marcellus would she have gone?

(Objected to.)

Ans. She would have been fifteen or twenty feet from her.

6th int. If the Marcellus had changed her course, by luffing, would she or not have luffed across the course of the schooner, or how?

(Objected to.)

Ans. She would have done, if the schooner didn't luff—the schooner I was aboard of.

7th int. Did or not the Marcellus luff before the collision took place?

Ans. Not as I know of.

8th int. Did you or not perceive any change in her course?

Ans. No, sir.

9th int. Did or not your schooner luff before the collision, or keep straight on?

Ans. Not while I was on board. My schooner did not luff while I was on board. I left her immediately after the ship ran into the other schooner.

10th int. Where were you standing while on board of the schooner you was aboard of?

Ans. I was standing forward, talking to the captain.

11th int. If the Marcellus had luffed across the course of your schooner before the collision, would you or not have known it?

(Objected to.)

Ans. Yes, sir.

12th int. Which way was the wind at the time of the collision?

Ans. About southwest.

13th int. On which side of the Narrows did the collision take place—windward or leeward?

Ans. To leeward, on Lovell's island shore.

14th int. How near the leeward, or Lovell's island shore, did the collision take place?

Ans. Between forty-five and sixty feet from the shore.

15th int. Was there or not a point on the Lovell's island side near the place of the collision? If so, how near?

(Objected to.)

Ans. There was [a] point. That is where they got ashore, on the point. They were close to it when they struck one another.

16th int. How much acquaintance have you had with the Narrows between Lovell's and Gallup's islands, where the collision took place?

Ans. I am down there every day, sometimes two or three times a day, sometimes all day, for the last two years. I don't know the soundings there, but I know that the deepest water is on the Lovell's island side. Vessels can go right close to it. If you was aboard the vessel, you would almost think you could jump ashore, they go so close.

17th int. Could the Marcellus have gone any nearer to Lovell's island shore than she did, with safety?

Ans. I don't think she could, on account of the point being on her lee bow. If she had been more towards the bend, she could have gone more in towards the shore, because where she lay, I could pull my boat ashore with one stroke of the oars. With one stroke of the oars, she would have been right on the beach.

18th int. Did you see the Empire before the collision? If so, how long before?

Ans. I see her about two or three minutes.

19th int. When you first saw her how was she heading?

Ans. Heading towards Lovell's island.

20th int. How far off was she then from the Marcellus, as near as you can state?

Ans. I can't rightly state. When I first saw [her] she was just coming clear of the black buoy at Nix Mate.

21st int. Did or not the Empire change her course before the collision? if so, how?

Ans. She luffed up.

22d int. How much?

Ans. Two to three points, I suppose; about three points.

23d int. How did the schooner head just before the collision, for what land, if any?

Ans. She headed towards George's island—*Gallup's* island.

24th int. At the time the schooner began to luff, before the collision, was she ahead or on the weather or lee bow of the Marcellus, or how?

Ans. A little on the lee low.

25th int. After the schooner luffed, and before the vessels struck, did you see any change in the sails of the schooner? If so, what?

Ans. I saw the jib shake. That is all I could see. I heard it shake, and then I looked and saw it flapping in the wind.

26th int. What was the effect of the luffing of the schooner Empire? How did it bring her as to the Marcellus?

Ans. It brought her right broadside to her,—broadside under her bows.

27th int. Did you, or not, see the schooner Empire before you got aboard the schooner where you were?

Ans. Not to take notice of her. I didn't take notice of her until the captain of the schooner spoke about her.

28th int. How was the schooner Empire then heading, and for what land, if any?

Ans. She was heading for Lovell's island.

29th int. What did that captain say when he spoke to you about the Empire?

(Objected to.)

Ans. He wasn't speaking to me more than to his men forward. He said, What is that schooner about? what is she going to do?

30th int. Did you hear any hails between the schooner and ship? If so, what, if you know?

Ans. I heard some one singing out, but I could not make out what it was.

31st int. Did you, or not, testify on the stand in this case before U. S. District Court?

Ans. Yes, sir, for the Marcellus.

32d int. Since that time has any one on the part of the schooner Empire called on you? If so, who?

Ans. One man has; Mr. Littlefield.

33d int. Did he, or not, talk to you about this case?

Ans. Yes, sir.

34th int. What did he say?

(Objected to.)

Ans. He asked me if my name was John Thompson, and I said it was. He asked me if I was a witness about this case, and I said [I] was. I had been sent for from my work so many times, I told him I didn't want to talk about it. That was down at the stable where I worked. He asked me about the case; I told him I didn't care anything about; I had as lief the schooner should gain the case as the ship. He told me, then, he was a poor man, and had to earn his living the same way as I did myself. I told him that the man I worked with lost more than three hundred dollars by the job by my being away. He told me, then, he didn't want me to lose my time without my being paid for it. He asked me, then, the reason I would not talk to him about the case,—so I told him, then, as I was a witness, I didn't want to have anything to say, and walked away down the wharf. That is all that he said to me, except what he said about the captain of the Rescue. He said so much about the captain of the Rescue, that I didn't take much notice of it.

35th int. Did he or not, offer to compensate you in any way or for anything? If so, how?

(Objected to.)

Ans. He offered me a quarter of a dollar for the time I had lost. I wouldn't take it.

36th int. Did he show you the quarter?

Ans. Yes, sir.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. Hear your answer to the 3d interrogatory, and were you astern of the ship on his weather quarter?

Ans. I was astern, about a point on the weather quarter.

2d cross-int. Where did you go on board the schooner?

Ans. I boarded the schooner just above Spit Light?

3d cross-int. How wide are the Narrows between the point on Lovell's island, where the vessels went ashore, and Gallup's island?

Ans. I don't know how wide it is.

4th cross-int. Will you give the best of your judgment?

Ans. I don't know. I never measured it, and I can't say. I can't give no opinion at all how wide it is.

5th cross-int. How wide do you think it is?

(Objected to.)

Ans. I can't say how wide it is. I never took any particular notice to see how wide it is.

6th cross-int. Is it one thousand feet?

Ans. It mght be more: it might be less.

7th cross-int. How long is the ship Marcellus?

(Objected to.)

Ans. That is more than I know. I don't know how long she is.

8th cross-int. Did you see her that night after the collision? Did you go over to where the vessels were after the collision?

Ans. Yes, sir.

9th cross-int. Did you go aboard of the Marcellus?

Ans. No, sir.

10th cross-int. Did you go around her, or along her side?

Ans. I went close to her side.

11th cross-int. Can you form any judgment as to her length?

Ans. No, sir.

12th cross-int. None at all?

Ans. No, sir.

13th cross-int. (*De bene.*) Was that the time when the schooner was luffing when the captain said, "What is the schooner doing?"

Ans. No, sir.

14th cross-int. How far was the schooner you were on from Gallup's island at the time of the collision?

Ans. I don't know how far she was.

15th cross-int. Can you form any opinion?

Ans. No, sir.

16th cross-int. Do you mean where she lay after the collision, in your 17th direct answer?

Ans. I mean *before* she struck.

17th cross-int. How far were the vessels from Gallup's island shore when they came in collision?

Ans. I don't know.

18th cross-int. Can you form any opinion?

Ans. No, sir.

19th cross-int. How long after the hallooing you heard before the collision?

Ans. About a minute or so—a minute and a half.

20th cross-int. Did the Marcellus come up that night in the place that ships of her size usually come up in?

Ans. Yes; they generally come up that way. Some come up more to windward.

21st cross-int. How far is Nix's Mate from the point of collision?

Ans. I don't know how far it is.

22d cross-int. Can you form any opinion?

Ans. No, sir.

JOHN THOMPSON.

Deposition of Henry Norris.

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is Henry Norris; age, twenty-five years; residence, Hyannis; and I follow the sea.

2d int. How long have you followed the sea? in what business, and in what capacity?

Ans. For ten years. I was coasting along for four years, and since then I have been off on different foreign voyages; I have been second mate.

3d int. Were you, or not, on board the ship Marcellus at the time referred to in this case? If so, in what capacity?

Ans. I was aboard as second mate.

4th int. Had, or not, the Marcellus a pilot on board? If yea, where was he taken on board?

(Objected to.)

Ans. We had a pilot. He was taken on board outside the light, some ways outside the light.

5th int. Before the collision took place between the Marcellus and the schooner Empire, to which shore had the Marcellus been sailing nearest, the windward or the leeward shore?

Ans. The leeward.

6th int. How was the wind at the time?

Ans. Southwest, I should judge.

7th int. About how near the leeward shore was the Marcellus sailing before and at the time of the collision?

Ans. About forty feet, I think.

8th int. Did you, or not, see the steamer Rescue pass you? and if so, what became of her?

Ans. She passed us, went to windward of us, and passed on ahead.

9th int. After the steamer passed you how were your courses as to each other?

Ans. The steamer was ahead of us after she passed us.

10th int. Did you see her pass the schooner?

Ans. No, sir, I did not.

11th int. How were the ship's yards?

Ans. Braced up sharp.

12th int. Where were you on board the Marcellus? and who, if any one, was with you?

Ans. I stood about amidships talking with the carpenter at the lee rail.

13th int. How long before the collision did you see the Empire?

Ans. About two or three minutes, I should judge.

14th int. How far off was she when you first saw her?

Ans. I think she was a hundred yards.

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15th int. Where was she when you first saw her ahead, to the windward or leeward? and if to windward or leeward, how much?

Ans. She was about a point on our lee bow.

16th int. How much of her could you see to leeward?

Ans. I saw the whole of her.

17th int. How was she heading when you first saw her?

Ans. She was heading a little across our bow, to windward.

18th int. Did she or not, to your knowledge, change her course before the vessels came together? and if so, how?

Ans. She luffed a little after I saw her.

19th int. How near the leeward shore was the Marcellus at the time of the collision?

Ans. About forty feet, I think.

20th int. Could the schooner have gone safely between the Marcellus and the leeward shore?

Ans. No, sir.

21st int. Could she or not have gone to the windward if she had commenced in season?

(Objected to.)

Ans. Yes, sir, I think she could.

22d int. What was the first thing which called your attention to the schooner Empire?

Ans. Either the captain or the pilot sung out to the mate forward to know whether she would go clear or not?

23d int. What reply, if any, did the mate make?

(Objected to.)

Ans. He said he thought she would go clear.

24th int. What else, if anything, took place before the collision?

Ans. I don't remember anything.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. After you first saw the schooner, did you keep your eye on her till the collision?

Ans. No, sir, I did not.

2d cross-int. After first seeing her, to what was your attention next drawn?

Ans. To hearing the captain or pilot singing out to the mate to know if she would go clear.

3d cross-int. Was it at the time you first saw her that the captain or pilot called out?

Ans. No, soon after; perhaps about a minute after.

4th cross-int. Was it before you had taken your eye off the schooner?

Ans. Yes, sir.

5th cross-int. Did that cause you to look away from her?

Ans. Yes, sir; because I thought he was singing out to me at the time, and I went forward.

6th cross-int. Had the schooner changed her course any before this call, after you first saw her?

Ans. Yes, sir; she had changed it a very little. She had luffed a little.

7th cross-int. How long after you first saw the schooner before you heard the call and looked away from her?

Ans. Not more than a minute.

8th cross-int. Was she nearly up to the wind when you took your eye off her to go forward, or how was she?

Ans. She was pretty near the wind, I should think.

9th cross-int. After you heard the mate say she would go clear, did you hear him say anything else, or hail any one?

Ans. After that, the mate hallooed for them to luff.

10th cross-int. Did you hear any hail from the schooner?

Ans. No, sir.

11th cross-int. Where were you when the collision took place?

Ans. I was standing just by the galley door, to leeward.

12th cross-int. How far forward had you been?

Ans. I hadn't been any farther than that.

13th cross-int. Had you turned round before the collision? Did you see the men run aft from the forecastle?

Ans. I had not turned round before the collision. I saw the men run aft, and as soon as I saw them run, I ran also.

14th cross-int. Did you see the men start to run aft before you got further forward than the galley?

Ans. No, sir. They didn't start till I had been at the galley a few seconds.

15th cross-int. Did you notice the schooner after you started to go forward, and before the collision, and where was she then?

Ans. I did notice her. She was then about half [a] point, I should think, on our lee bow, and about fifty yards off, I should think. This was when I was at the galley. I was on the leeward side of the galley.

16th cross-int. Has the Marcellus a rising bow?

Ans. Yes, sir.

17th Cross-int. Could you see the hull of the schooner over her bow, as you stood, at the galley?

Ans. No, sir.

18th cross-int. What part, and how much of the schooner could you see then?

Ans. I could see all except her hull—about all her sails.

19th cross-int. Did you hear any hail to the schooner from the Marcellus, after the collision?

Ans. The mate hailed them and wanted to know if all hands were saved.

20th cross-int. When you first saw the schooner did you think there would be a collision?

Ans. No, sir.

21st cross-int. When did you first think there would be?

Ans. After I had been forward some time, just before the men ran aft.

22d cross-int. Had you made any change in the yards just before, or as you entered the harbor, on the Marcellus?

Ans. They had been the same some time before entering the harbor.

23d cross-int. Did or not the course of the ship, as you entered the harbor, change somewhat to the north'ard or leeward?

Ans. Yes, sir, it did.

24th cross-int. How did that give the Marcellus the wind, as you came up the Narrows?

Ans. The wind was about abeam of us.

25th cross-int. What were you doing on the ship, after you entered the harbor?

Ans. I was talking with the carpenter. I had been standing there with him about fifteen minutes.

26th cross-int. Had you been taking any particular notice of how near the land was? Are you acquainted with the harbor at that place?

Ans. I had been taking particular notice of how near the land was. I am not acquainted with the harbor at that place.

27th cross-int. What led you to take any particular notice of how far the land was off?

Ans. Because we were so near, and standing to leeward there, we couldn't help it very well.

28th cross-int. Was there anything else?

Ans. No, sir.

29th cross-int. What is the length and width of the Marcellus?

Ans. I don't know.

30th cross-int. How long were you in her?

Ans. A little over thirteen months.

31st cross-int. Why can you not tell how long, or wide she is, as well as you can how many feet she was from the shore?

Ans. I never heard any one say how long or how wide she was. I suppose I might judge of her length the same as I did of her distance from the land.

32d cross-int. Give, then, your opinion?

Ans. I think she is about two hundred feet long, and about twenty-five or thirty-feet wide.

33d cross-int. And how far do you say she was from the shore, and what time?

Ans. I should judge she was about forty feet, just before she struck, and for about a minute before.

34th cross-int. Do you think the vessel was within about her width of dry land?

Ans. I should think a little more than her width was between her and the land.

35th cross-int. Did you look at the shore after you went forward?

Ans. Not before the collision; I noticed it at the time of the collision.

36th cross-int. Was there some confusion at the time of the collision? Did you go forward after the collision?

Ans. There was some confusion at the time of the collision. I did go on to the topgallant forecastle after the collision.

37th cross-int. Was there, at once, orders to heave the sails back?

Ans. There was.

38th cross-int. Was it done?

Ans. Yes, sir.

39th cross-int. Was not you engaged in these operations?

Ans. Yes, sir.

40th cross-int. Did you stop to examine the distance you were from the shore, before these orders were executed?

Ans. No, sir, not particularly. I got up on the topgallant forecastle to look at the schooner, and noticed we were not far from land.

41st cross-int. Did you take any particular notice?

Ans. No, sir.

42d cross-int. Was it light or dark, or how otherwise?

Ans. I should think it was about dusk.

43d cross-int. Did you see the steamer after she passed to you?

Ans. Yes, sir.

44th cross-int. When you first saw the schooner how far was she from the lee shore?

Ans. I should think she was about as far off as we were—about forty feet. I should think more, about fifty or sixty feet.

45th cross-int. (*De bene.*) How do you know the man who came aboard, as you state, was a pilot?

Ans. He came out of a pilot boat. I don't know that he was a pilot. It was the same man who took us out when we went to sea.

46th cross-int. How long did you see the steamer after she passed you?

Ans. Perhaps half a minute; not long, for I didn't notice.

47th cross-int. How can you say, then, her course was ahead of yours?

Ans. Because she was steering off a little more to the leeward than we were.

48th cross-int. That is all the reason, is it?

Ans. Yes, sir.

49th cross-int. Have you ever heard any one say how far the Marcellus was sailing from the shore that night, in their opinion?

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Ans. No, sir.

50th cross-int. Did you hear the captain of the Marcellus say to the mate after the collision, that he had bothered the pilot, or any words to that effect?

Ans. No, sir, I did not.

51st cross-int. Do you know whether the Marcellus changed her course at all after you first saw the schooner, and before the collision?

Ans. I do not.

52d cross-int. How soon after the collision did you go to sea?

Ans. I went to sea in about a month after the collision and have been back about three weeks.

HENRY NORRIS.

Deposition of Benj. F. Jones.

1st interrogatory. What is your name, age, residence, and occupation?

Ans. My name is Benjamin F. Jones; age, thirty-four years; residence, Hyannis, Massachusetts, and I am at present a carpenter.

2d int. Were you or not on board the ship Marcellus at the time of the collision between her and the schooner Empire, referred to in this case, and if so, in what capacity?

Ans. I was; as carpenter.

3d int. Where were you at the time, and how long had you been there?

Ans. I was at the starboard gangway, — amidships, the leeward side. I had been there perhaps fifteen or twenty minutes.

4th int. Who, if any one, was with you, and what had you been doing?

Ans. The second mate was with me. We were doing nothing in particular, except looking at the shore as we passed by, — talking.

5th int. To which shore was the Marcellus nearest, and how near was she, and how long had she been so, and how long did she so continue?

Ans. She was nearest to the leeshore; I should think she was not over forty feet from the shore. We had been passing along very near the shore for some time, perhaps ten minutes. She continued that distance up to the collision.

6th int. Was any remark made by you or to you before the collision, as to her nearness to the leeward shore? if so, state what and by whom?

(Objected to.)

Ans. There was a remark made of the kind. I do not remember whether I made the remark or the second mate. There was a remark made between us as to her being so near the shore.

7th int. Did, or not, the Marcellus change her course before the collision? if so, how?

Ans. She did not, to my knowledge.

8th int. Did she keep off?

Ans. Not that I am aware of.

9th int. Could she?

(Objected to.)

Ans. I should say not, without danger of going ashore.

10th int. Why could she not keep off?

(Objected to.)

Ans. I suppose she was as near the shore as she could be without going ashore.

11th int. When did you first see the schooner Empire? how long before the collision?

Ans. I saw her a very short time before the collision, only two or three minutes before.

12th int. Where was she, on which bow, and how was she heading when you saw her?

Ans. She was on our lee bow, heading towards the southerly shore, across our bows.

13th int. When you first saw her, how much on your lee bow was she?

Ans. She was so that we could see the hull of her by looking over the lee rail where I stood, I think.

14th int. Do you recollect whether you could see the whole of her or not, when you first saw her?

Ans. I couldn't say for a certainty, because I didn't pay particular attention to that. I think I could do so.

15th int. From the first time you saw her to the time of the collision, did she change her course?

Ans. Not that I know of.

16th int. Was she then heading on her course down the channel, or how?

Ans. She was heading towards the southerly shore, across our bows.

17th int. What first called your attention to her?

Ans. What first called my attention to the schooner was a hail from some one, "luff."

18th int. Where did that hail come from?

Ans. I couldn't say, but I had an idea it came from the schooner, being some distance off.

19th int. Do you know how the wind was at the time of the collision?

Ans. About southwest.

20th int. Was the schooner across your bows when you first saw her, or was she heading across?

Ans. She was heading across?

21st int. How far off was she when you first saw her?

Ans. I should think not more than a hundred yards. It is mere guesswork, as I did not pay particular attention to her at the time.

Cross-examination by T. H. Russell, Esq., Proctor for Libellants.

1st cross-interrogatory. What cargo had the Marcellus? What is her length? how many holds? how deep? how as to her bow, is it rising, or how otherwise?

Ans. Her cargo was principally rattans; the rest was rubber and gambia. Her length is one hundred and fifty feet. She had two holds. I never measured them. One is deeper than the other. The lower is about twenty-five feet, and the other eight or ten feet. My measurements are guesswork.

2d cross-int. Which side did the mate run forward on?

Ans. The larboard side of the Marcellus.

3d cross-int. Where did you stand when you saw the schooner? Were you or not then leaning on or over the rail of the ship?

Ans. We were standing at the rail.

4th cross-int. Did you look round your starboard bow for her, or how otherwise?

Ans. We did so.

5th cross int. How long after the collision did the vessel go ashore?

Ans. Somewhere from five to eight minutes — not over eight minutes, I should suppose.

6th cross-int. Did you notice some stir aboard the Marcellus before you saw the schooner?

Ans. I did not, otherwise than the running of the mate forward.

7th cross-int. (*De bene.*) — Can you positively say whether the remark about being near the shore was before or after the collision?

Ans. I am positive it was before the collision?

8th cross-int. Do you know anything of the soundings at the place where the collision took place?

Ans. I do not.

9th cross-int. Have you before given your evidence in this case?

Ans. I have.

10th cross-int. Do you remember at what distance you then stated the Marcellus was sailing from the lee shore at and before the collision?

Ans. I don't know that I do. I presume it was the same or nearly the same that I have said now.

BENJAMIN F. JONES.

Deposition of Joseph Humphreys.

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is Joseph Humphreys; age, twenty-seven years; residence, Boston; and I am cook and steward of the tow-boat Rescue.

2d int. On board what vessel were you at the time of the collision between the Empire and Marcellus?

Ans. I was on board the Rescue, as cook and steward.

3d int. From what place were you coming, and where were you going at the time?

Ans. We were coming up to Boston from down the harbor.

4th int. In coming up, did you pass the Marcellus, and where?

Ans. We passed the Marcellus by George's island — between George's island and the Narrows.

5th int. Were you below or on deck at the time?

Ans. On deck, sir.

6th int. How near the Marcellus did you go, and on which side?

Ans. We went from ten to fifteen feet from the Marcellus. We passed her on the weather side.

7th int. How was the wind?

Ans. About southwest.

8th int. To which shore was the Marcellus nearest in passing through the Narrows?

Ans. Lovell's island.

9th int. How near Lovell's island shore did she pass?

Ans. From thirty-five to forty feet, I should judge the ship was. We were about twenty-five or thirty feet.

10th int. After you pass the Marcellus, how near Lovell's island shore did you sail?

Ans. About twenty-five or thirty feet.

11th int. How did the Marcellus go then?

Ans. The Marcellus was right in our tracks, astern of us.

12th int. Did she or not follow in your wake along Lovell's island shore?

(Objected to, as leading.)

Ans. Yes, she was right in our wake.

13th int. To which shore was she nearest?

Ans. She was nearest to Lovell's island shore.

14th int. How many years have you followed the seas, and how many times through those Narrows have you been?

Ans. I have followed the seas fifteen years. I have been six years in the harbor, in tow-boats, and pilot-boats. I can't make any estimate as to how many times I have been through the Narrows; sometimes three or four times, and sometimes twenty times a day.

15th int. Are you acquainted with the water and the shore in the Narrows? Could or not the Marcellus have gone any nearer Lovell's island shore than she did, with safety? If so, how much nearer?

(Objected to.)

Ans. She couldn't go any nearer, with safety. I am acquainted with the water and shores in those Narrows.

16th int. Did you or not see the schooner Empire that day? If so, where, and state what you saw of her?

Ans. I saw her coming down from Boston, ahead of us, as we were coming up. We were in the Narrows when I first saw the Empire. She was coming round Nix's Mate. When we saw the Empire she was heading for us. (I heard the mate of the steamer (say) she was yawing about dreadfully. I heard the captain say to the mate to put the wheel up, to put us nearer to Lovell's island than we ought to go. Then her main boom was just on our deck.)

(Objected to.)

17th int. When you first saw the Empire was she ahead, or on the lee or weather bow, or how?

Ans. When we first saw her, she was ahead of us, and we couldn't tell her course, on account of her yawing so. She didn't change her course at all. We went to leeward of her. If we hadn't changed our course she would have run into us, or we into her. We changed our course, by putting the wheel up, and went to leeward of her.

18th int. When you went to the leeward of her, were you still in the Narrows, or had you got out of the Narrows?

Ans. Just on the point of going out.

19th int. When you passed her, had you passed the point or not?

Ans. We were just passing it.

20th int. How near the shore did you then go?

Ans. Within twenty-five or thirty feet.

21st int. Could, or not, the ship Marcellus go as near as that with safety?

(Objected to.)

Ans. She couldn't go any nearer than that with safety.

22d int. How near did you go to the Empire in passing her?

Ans. We went within eight or ten feet of her. Her main boom was across our deck.

23d int. Was there any hail between your boat and the schooner? if so, what was it, and from whom did it come, and when?

Ans. I heard our captain, Capt. Cummisky, sing out to the Empire that there was a ship right astern of us; I saw the schooner when she passed us, and she was heading right for the ship in our wake. The hail was loud enough for anybody to hear, if they were sober.

24th int. Did you see the ship and schooner come together?

Ans. I heard the schooner's sails shake and the crash. I could see the loom of them together; couldn't see them plain. There wasn't daylight enough to swear that you see them come together. It was a little dusk.

25th int. Did you see any change in the course of the schooner after you passed her, and before the collision? if so, when?

Ans. No, sir. She made no change.

26th int. Could she have gone to the leeward of the ship, if not, why not?

Ans. She could not. There wasn't water enough.

27th int. How far were you from the vessels when they came together?

Ans. Half to three-quarters of a mile.

28th int. Could the schooner have gone to the windward of the ship? if so, how?

Ans. She could have gone to windward, by putting her helm down and luffing right up to the wind, when the captain hailed her.

29th int. Did you see the captain of the Empire after you arrived in Boston? if so, where?

Ans. I did see him aboard the Rescue.

30th int. Did you, or not, hear any conversation between him and any one on board your boat? if so, with whom, and what, if anything, did he say?

(Objected to.)

Ans. I heard him make the remark to the man who was with him, that he wouldn't alter his course going down Boston harbor for any man.

31st int. From the facts you have testified to, through whose fault, if any, in your opinion, did the collision occur?

(Objected to.)

Ans. The schooner's fault.

32d int. From the facts, as you saw them, through whose fault, if any, did the collision occur, in your opinion?

(Objected to.)

Ans. The schooner's.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. Did you look at the compass when coming up.

Answer. No, sir. I could tell how the wind was without the compass, by the ship heading.

2d cross-int. What were you doing after passing the Marcellus till you passed the Empire?

Ans. I was walking round the deck, gentleman. My work was all done.

3d cross-int. Where were you when you passed the schooner Empire?

Ans. I was forward on the port bow, alongside of our captain.

4th cross-int. How wide is the Rescue?

Ans. About thirty feet—twenty-five to thirty feet. I have been in her two years, but never measured her.

5th cross-int. Which way, by compass, was the schooner heading when you passed her?

Ans. I didn't look at the compass. I am not going to swear which way she was heading by compass, when I didn't look at the compass. Before she passed us, she wasn't heading away. She wasn't steering any true course. After she passed us, she went in our wake.

6th cross-int. How long did you watch her after she passed you?

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Ans. Till she made the collision.

7th cross-int. What was the direction of your wake by compass?

Ans. You must ask the mate that. If I was steering the boat I could tell you.

8th cross-int. What is the course of the channel through the Narrows, by compass?

Ans. I am not going to say anything about the course; that is not my business. I don't know, to be sure, what the course is, unless I was aboard and could see the compass.

9th cross-int. Would the compass enable you to tell what the course of the channel is through the Narrows, and how?

Ans. It would. The course through the Narrows is northwest and by north, I believe, up to Nix's Mate.

10th cross-int. What is the depth of the water in the Narrows?

Ans. From ten to fifteen and twenty fathom, high water.

11th cross-int. Have you been in the Rescue since the collision, till now?

Ans. Yes, sir.

12th cross-int. What has been your business for six years?

Ans. Cook and steward in the R. B. Forbes, in pilot Cornelia a year, in yachts Young America, and in the Surprise, in the pilot-boat Flirt, Surprise pilot-boat, in the Bouquet pilot-boat, in the steamer Relief, and now in the Rescue.

13th cross-int. What pilot was on board the Marcellus that night?

Ans. Mr. Williamson.

14th cross-int. How long have you known him?

Ans. Four years.

15th cross-int. Ever cook and steward in his boat?

Ans. Yes, sir, in the Bouquet.

16th cross-int. Have you seen him since the collision?

Ans. I have seen him. I spoke once to him, that is all.

17th cross-int. How far ahead of the Marcellus were you, as you came up?

Ans. About half to three-quarters of a mile.

18th cross-int. Had the Marcellus any light up? What time was it? Had the Empire a light?

Ans. I wouldn't swear to it. It was between seven and eight o'clock. It was after supper. The Empire had no light.

19th cross-int. Had you taken any particular notice of how near the land you were, before you met the schooner?

Ans. Yes, sir.

20th cross-int. What led you to notice this?

Ans. Because I was on deck, sitting down, on the starboard side, nearest the shore.

21st cross-int. Were you not running up in about the place you usually pass up?

Ans. Yes, sir, till we had to keep off for the Empire.

22d cross-int. Were you running up about in the place vessels usually run up, before you kept off, as you say, for the Empire?

Ans. Yes, sir.

23d cross-int. Did you see the schooner come round Nix's Mate?

Ans. I saw her just as soon as she came round Nix's Mate.

24th cross-int. Did you then see her set her sail or take any course?

Ans. No, sir. She was yawing about.

25th cross-int. How much yawing? How much did she vary from a straight course?

Ans. She would take two to three points sheer each way.

26th cross-int. How often shifting from one side to the other?

Ans. I should judge she wasn't steering any true course. She swung off two or three times when she was close to us.

27th cross-int. Was she heading down the Narrows, or more towards Lovell's or Gallup's island, when you first saw her?

Ans. She was heading for us when we first saw her. Her true course was for us, but she yawed most towards Lovell's island. Her true course was to windward of us.

28th cross-int. As the wind was, which side of the ship ought the schooner to have gone?

Ans. She ought to have gone to windward of the ship.

29th cross-int. Who was the engineer of the Rescue?

Ans. William Walker.

30th cross-int. Did the Rescue stop before you heard the crash?

Ans. Yes, sir.

31st cross-int. Where is the engineer, Walker, now?

Ans. He is in East Boston.

32d cross-int. Have you talked with any one about the collision since it occurred? and how soon after did you talk with any one about it? and with whom?

Ans. The next day I talked with Thompson about what the captain of the Empire said. That is all, except what I said up here.

33d cross-int. (*De bene.*) Who was with the captain of the Empire, when he was aboard of your boat, as you say? Whom did he talk with there?

Ans. I don't know who it was with the captain of the Empire. The captain of the Empire talked with that man who was with him. I didn't see him talk with any one else.

34th cross-int. Were the schooner's sails full when you passed her?

Ans. Yes, sir.

JOSEPH HUMPHREYS.

Deposition of Robert Bond.

1st interrogatory. What is your name, age, residence, and occupation?

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Ans. My name is Robert Bond; age, twenty-six years; residence, Boston ? and I am mate of the Rescue.

2d int. Were you or not on board the steamer Rescue at the time of the collision referred to in this case? if yea, in what capacity?

Ans. I was, as mate.

3d. Did not the Rescue pass the Marcellus in coming up the Narrows, before the collision? if yea, how near did you go to her?

Ans. We did pass her just as she was coming into the Narrows, within ten or fifteen feet of her.

4th int. Did you pass up through the Narrows? If so, how near the upper point of Lovell's island did you go?

(Objected to.)

Ans. We did; we went within twenty-five or thirty feet of the upper point of Lovell's island.

5th int. Did or not the Marcellus follow you? if so, was she in your wake, or how?

(Objected to, for form.)

Ans. Yes, sir; she was in our wake.

6th int. How near to Lovell's island upper point did she go?

Ans. I should judge she would have gone from thirty to fifty feet, if she hadn't come in contact with the schooner.

7th int. After you passed the point of Lovell's island referred to, did or not the Rescue change her course?

(Objected to.)

Ans. Yes, sir.

8th int. How did she change it, and how much?

Ans. I couldn't tell exactly how much, for we were not steering by the compass. I should judge half a point to a point. We changed the course more to the westward.

9th int. Why did you change your course?

Ans. Because we were too near Lovell's island.

10th int. Did you or not pass the schooner Empire in coming up that night?

(Objected to.)

Ans. Yes, sir.

11th int. Did you or not change your course in passing her? if so, how, and how much?

(Objected to.)

Ans. We changed our course as much as two or three points, first one way then another; for she, the schooner, was going first one way and then another, till I thought we were going ashore.

12th int. Did or not the schooner change her course before or at the time you passed her? If so, when and how?

(Objected to.)

Ans. She changed it some time before; I couldn't tell which way she was going; she was wriggling around. I was at the wheel, and couldn't tell myself which way she was going. She hauled up a little mite, as we got abreast of her. Our helm was at the time hard aport.

13th int. Did you or not hear any hail between the Rescue and the schooner, at or about the time you passed her? if yea, what?

(Objected to.)

Ans. Yes. I heard the captain of the Rescue sing out "look out for yourself, for there is a ship right astern of us, or right ahead of the schooner," I couldn't tell which. That was all that was said. The captain of the Rescue sang out to the schooner "to keep your luff."

14th int. How near you was the schooner, at the time of this hail?

(Objected to.)

Ans. Her mainboom was nearly touching our deck.

15th int. How loud was the hail referred to?

(Objected to.)

Ans. It was loud enough for any one to hear, that wasn't deaf.

16th int. Did you see any one on the deck of the schooner at the time?

Ans. Yes, sir.

17th int. Was there or not, any reply to that hail? if so, what?

Ans. No, sir.

18th int. Did you see the schooner and ship come together?

Ans. Yes; I saw the vessels come together, but not very plain. I heard the crash plain enough. I just bobbed my head out of the wheel-house.

19th int. What were you doing on board the Rescue?

Ans. I was at the wheel.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. Did you look out of the wheel-house before or after you heard the crash?

Ans. Before it.

2d cross-int. How far were the vessels then from the Rescue?

Ans. About a quarter or half a mile.

3d cross-int. Were you steering when you passed the Marcellus and after?

Ans. Yes, sir.

4th cross-int. After you passed her, the Marcellus, was she behind you?

Ans. Yes, sir. I lighted my pipe after we passed the ship, and then took the wheel again before the collision. The wheel-house of the Rescue has windows all around and two doors.

5th cross-int. Did you watch the Marcellus after you passed her?

Ans. Not till a little before I heard the crash.

6th cross-int. Where did you pass the schooner?

Ans. About one hundred and fifty feet above the upper point.

7th cross-int. Where had the Rescue been?

Ans. She had been down to see if she couldn't get a ship to tow.

8th cross-int. Did you pass any other and what vessels in the Narrows that night?

Ans. That I couldn't tell. We passed some schooners, but I couldn't tell what their name is.

9th cross-int. Did the Rescue come up that night about in the place she usually comes up in?

Ans. No, sir.

10th cross-int. What occasion had she to vary, that night?

Ans. Because she would have run into the schooner, if she hadn't, or the schooner into her.

11th cross-int. Was that change the only difference from her usual course that night?

Ans. Yes, sir.

12th cross-int. Did you hear Humphrey, the cook and steward, testify in this case two or three days ago?

Ans. I was here, but I didn't pay no attention to it.

13th cross-int. When was this collision?

Ans. I couldn't tell exactly the month it was in. It was in October, the 15th or 17th, as near as I can judge.

14th cross-int. Have you been in the Rescue ever since?

Ans. Yes, sir.

15th cross-int. Did you bring up anything from the wreck of the Empire? any flour or other thing that night, on the Rescue?

Ans. I don't know. I saw a flour-barrel aft after we got up. I don't know whether there was anything in it. It looked to be empty.

16th cross-int. What became of this flour-barrel?

Ans. I don't know.

ROBERT BOND.

Deposition of Hugh Cummiskey.

1st interrogatory. What is your name, age, residence, and occupation?

Ans. My name is Hugh Cummiskey; age, forty-one years; residence, East Boston, and I am steamboat captain at present, captain of the Rescue. The Rescue is a tow-boat employed in Boston harbor. I have been steamboating in this same business thirty years, off and on—not all the time.

2d int. Were you or not in the Narrows between Lovell's and Gallup island the day the collision referred to in this case took place? If so, when did you see the Marcellus first, and what did you see of her?

Ans. I was there that day. I was off Point Alderton when I first spoke the ship, about an eighth of a mile from the buoy. I went after her, spoke her, went round her, kept alongside of her all the way up to the Spit Light, and kept talking to her. I asked the captain if he would take steam up. He said he wished I had been down an hour sooner, but now we have got a fine breeze, and don't think we want you.

3d int. Did you or not pass the Marcellus? If so, where, and how was the course of the Marcellus as to yours, after you passed her?

Ans. I passed her, after I found she could fetch through the Narrows, just about Spit Light. I said, go ahead, there is no use fooling with her, she can fetch through. She was about on my track. She might have been luffing an eighth of a point when I passed her. That was before she entered the Narrows. After I passed her, then she was right in my track.

4th int. From that time forward did she or not follow in your track through the Narrows?

Ans. It was a little dark at the time. She followed me as far as I could see. She might have varied a little. I couldn't say how much?

5th int. How was the wind when you were going through the Narrows?

Ans. I should call it southwest, as nigh as I should judge. I won't say that on oath, because it might have varied half a point either way.

6th int. To which side of the Narrows did you go nearest, Lovell's island or Gallup island?

(Objected to.)

Ans. Lovell's island point.

7th int. How near to Lovell's island point did you go?

(Objected to.)

Ans. I said before that I usually went the length of my boat, seventy or eighty feet. Now, since I have overhauled it, I should say within from thirty to about forty feet. I went to it as close as I could go, and keep clear of the schooner, the schooner that was coming down.

8th int. How wide are the Narrows referred to?

Ans. they are about three hundred yards.

9th int. Did you or not pass the schooner Empire? If so, where?

Ans. I passed her a little above the Narrows, not quite an eighth of a mile above.

10th int. When you first saw the Empire, how was she heading? and if for either shore, for which?

(Objected to.)

Ans. She was heading for my bow. She would be heading for Lovell's island point.

11th int. Which side of her did you go? State the circumstances?

(Objected to.)

Ans. I went on her port side; had to keep off about three points to keep out of her way.

12th int. If she had kept the same course she was then steering, where would she have gone?

(Objected to.)

Ans. She would have gone up on Lovell's island point, I think, the way she was heading accross my bow.

13th int. Was there or not any hail when you passed her? If so, what, and from whom?

(Objected to.)

Ans. I little forget that. I think I hailed him, and asked him where the h—ll he was going. After I got by him, I think I hailed him, if he was going to run into a fellow.

14th int. How near her did you pass her?

(Objected to.)

Ans. Within fifteen feet.

15th int. Did you or not say anything to her about the ship Marcellus, and if so, what?

(Objected to, for form and substance.)

Ans. I think I said, but I won't be certain, after he got abeam of me, "look out, there is a ship astern." I recollect saying to him, "there is a ship astern." I am sure of that. I don't recollect what the rest of the conversation was.

16th int. When you were passing the Empire, did you notice the Marcellus? if so, where was she, and how, with reference to Lovell's point?

Ans. After I passed the Empire, I walked out the pilot house, went aft, stopped my boat, and knew there would be a collision by the schooner running right for the ship. When I walked aft and looked at the ship over the western point of Lovell's island; the dry land was betwixt her and me. As I was passing the Empire I didn't notice the particular position of the ship.

17th int. How long after you had passed the Empire was it that you saw the Marcellus across the point of Lovell's island, as before stated?

Ans. It wasn't a minute and a half; from a minute and a half to two minutes; not over that; not that, I don't think. I walked about fifty feet before I could see the position of both vessels.

18th int. After you passed the Empire, did she or not continue the course she was then steering?

Ans. I shouldn't think she did. She must have luffed from a point to a point and a half, before the collision.

19th int. Did you or not bear away, or keep off, after you passed the point of Lovell's island referred to, and before you passed the Empire? if so, how much?

(Objected to.)

Ans. I did; I kept away three points to clear the schooner.

20th int. Did or not the Empire fall into your wake after you passed her?

(Objected to, for form and substance.)

Ans. Yes, sir. She must, or else she would struck me on the port bow, for she was running angling accross my bow.

21st int. How was her course immediately after you passed her, and before she came down near the point of Lovell's island?

(Objected to.)

Ans. I think, when she came on to me she was heading southeast by east. I wouldn't say how much she luffed. She had to luff to get clear of the point. I should say she would have to luff a point or a point and a half to clear the point. When she crossed my stern, she was heading for the point of Lovell's island; that is, as far as we could see.

22d int. Did you or not see the vessels when they came together?

Ans. I was looking straight at them both.

23d int. At the time they were coming together, how was the schooner Empire heading?

Ans. I should think she was luffing across the ship's bow.

24th int. Was she or not heading for either shore? If so, for which?

Ans. She was heading for the weather shore, I should think. She wasn't heading exactly for Gallup's island, I should think. She was heading for the weather shore. George's island and Gallup's island are both weather shore.

25th int. Was her course then the same as when she passed you?

(Objected to.)

Ans. No, sir.

26th int. How many points difference was there between the two courses?

(Objected to.)

Ans. I should think there was from four to five points. I wouldn't say positive, but I should think so.

27th int. About opposite what place did the vessels come together?

(Objected to.)

Ans. The western point of Lovell's island, which is the western point of the Narrows.

28th int. Is or not this the point you have referred to before, and near which you went with your steamer, and across which you afterwards saw the Marcellus?

Ans. Yes, the same point.

29th int. And for which you say the Empire was heading when she passed you?

(Objected to.)

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Ans. Yes, sir.

30th int. How is a southwest wind for vessels passing up and down the Narrows?

Ans. It is a fair wind both ways. A fore-and-aft schooner will lay from a point to a point and a half nearer the wind than a ship will.

31st int. When you passed the Empire, was she sailing close to the wind, or free, or how?

(Objected to.)

Ans. I should think she was going free. Her sheet was off considerable. She could have luffed two or three points and not have been in the wind.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. After you passed the ship at the Spit Light, did you watch her course?

Ans. I did not.

2d cross-int. Did you look at her again till you came out of the pilot house, as you say, after passing the schooner?

Ans. Yes, sir, at different times.

3d cross-int. How far ahead of her were you when you passed the western point of Lovell's island?

Ans. I couldn't say, accurately. I should think something less than a quarter of a mile.

4th cross-int. (*De bene.*) When you passed the schooner Empire, what part of the channel was she in?

(Objected to.)

Ans. To the leeward, which is the northeastern part.

5th cross-int. How far from the centre of the channel?

Ans. I should think, about a hundred and fifty feet.

6th cross-int. How far from the Cape Cod Shoal?

Ans. I should think from one hundred and fifty to one hundred and sixty feet; a little more or less, I won't say certain.

7th cross-int. Why did you keep off three points, as you say, and go to leeward instead of going to windward of the schooner?

Ans. Because she was running across my bow, and not stern. I should have had to alter my course more to go to windward. I could not have gone to windward of her. She would have run into me, sure. They always want to go to windward: Schooners under canvas generally want to go to windward.

8th cross-int. Did you see the schooner when you passed the point?

Ans. Yes, sir.

9th cross-int. When you approached the schooner was she heading across your bows to windward?

Ans. Across my bow to leeward. She was heading down for my port bow.

10th cross-int. Would you have then to alter your course most to go to windward or leeward of her?

Ans. I would have had to alter my course most to go to windward. She would have struck me if I had gone to windward. We were so close together, that I couldn't go to windward. She was heading down for my port bow. If I had attempted to go to windward, she would have struck me on my starboard quarter, sure.

11th cross-int. (*De bene.*) You were then heading to leeward of her before you altered your course?

Ans. A very little; I might have been heading for her port bow, no more. I couldn't have gone to windward of her—there wasn't time.

12th cross-int. You were approaching each other then very nearly head on; is that what you mean?

Ans. No, sir, not quite.

13th cross-int. Could she be heading much for your port bow and you not be heading to leeward of her?

Ans. She must have been heading for my port bow, of course, and across me a little bit. The minute I see her, I had to keep off, which brought her more on my port bow. When I first saw her, I was heading a little to the leeward of her.

14th cross-int. When was it you first saw her and was heading a little to leeward of her?

Ans. I couldn't say whether it was abreast of the point or this side of the point—somewhere about there.

15th cross-int. Was it after you had rounded the point, and taken your course up?

Ans. It was after I had taken my course up for Deer island.

16th cross-int. Did you say, "taken your course to clear Nix Mate?"

Ans. Yes, sir.

17th cross-int. How far were the vessels from you at the time of the collision?

Ans. I should think about an eighth of a mile—it might have been a little more or less.

18th cross-int. Where was the collision?

Ans. About the length of the ship to the southward of the Point, I should think—don't put it down as exact.

19th cross-int. What did you do after the collision?

Ans. After the collision I backed up my boat a bit—her stern went to port up for Gallup's island, I backed up across the channel; a coal schooner coming along nearly run into me; I had to go ahead again to get out of her way; slued my boat and backed down again alongside of the ship.

20th cross-int. Were the vessels ashore when you got to them?

Ans. I should judge not. The schooner had not sunk. The ship might have been on the bottom, I couldn't say.

21st cross-int. Where was the coal schooner?

Ans. In the channel.

22d cross-int. Did she pass you, and which side, and where were you?

Ans. I had backed up across the channel and she passed me to windward, on the weather side of the channel.

23d cross-int. Would the tide affect the course of a vessel in the Narrows more than a steamer?

Ans. I shouldn't think it would.

24th cross-int. At what point do you say the Narrows are 300 yards wide?

Ans. From the western point of Lovell's island. Understand, I never measured it. I guess at it, and from what I have heard other people say. I think I said before 600 feet. I guessed at then and now.

25th cross-int. (*De bene.*) What makes you think now that you went within thirty or forty feet of the point on Lovell's island, instead of seventy or eighty, as you say you before stated in your testimony in the District Court?

Ans. For the reason that I have been nigher the point since, and saw that I was mistaken. This isn't drawing hair-lines. I could go within fifteen or twenty feet at dead low water.

26th cross-int. How long after the collision was it before you testified in the District Court in this case, and how often are you through the Narrows?

Ans. I don't recollect how long it was after the collision. I go through the Narrows, sometimes six, sometimes two or three times, every day more or less.

27th cross-int. How long was it, according to your best recollection? twelve months, six months, three months?

Ans. I don't recollect—it might have been three months.

28th cross-int. Will you now swear that your boat did not go *seventy* feet from the point that night?

Ans. No, I won't. You can't make me, nor any other man; and I don't believe you can any one of the crew. I don't think it was seventy feet.

29th cross-int. How long did you continue on after passing the schooner before you stopped?

Ans. I don't recollect.

30th cross-int. Were the vessels across the point from you when they came together?

Ans. I should think they were.

31st cross-int. Are you positive about it?

Ans. The ship was across the land when she came in collision with the schooner. I had to look across the land to see her.

32d cross-int. Was the schooner also.

Ans. Yes, sir, or pretty near. I wouldn't say exactly, I didn't notice particularly. I was getting my boat around in the channel to go to them.

33d cross-int. You noticed the schooner as much as the ship, did you, at this time?

Ans. Yes, sir.

34th cross-int. Was it towards dusk at the time of the collision?

Ans. Yes, sir.

35th cross-int. Could you, at the distance you were, tell whether [the] schooner was heading towards George or Gallup island at the time of the collision?

Ans. Yes, sir. She was heading somewhere between them both, I couldn't tell exactly for which. She was heading across the ship's bow.

36th cross-int. Did you stay by the Marcellus after the collision, and how long? did you bring the ship up? and what did you receive for so doing?

Ans. I staid by the Marcellus some hour or so, getting her clear. I brought her up. I couldn't tell without my book what I received. I think it was $100.

37th cross-int. How many minutes after you passed the schooner before the collision?

Ans. I couldn't say, certain. It might have been five. It might have been more or less. I think it was as much as five minutes, from five to eight minutes.

38th cross-int. Where is the best water in the channel?

Ans. Two-thirds of the way to leeward, as the wind then was; on Lovell's island side, abreast of Lovell's island point.

39th cross-int. Have you ever told any one that the ship could have gone to leeward of the schooner with safety to herself?

Ans. Not that I recollect.

40th cross-int. Or words to that effect?

Ans. I don't recollect.

41st cross-int. Have you ever told any one that the schooner was on the wind when you passed her, and that from that time to the collision the schooner was making to windward, or any words to that effect?

Ans. I don't recollect that I did.

42d cross-int. Have you ever told any one that when you passed the schooner she was about in the middle of the channel, or words to that effect?

Ans. I don't recollect that I did.

43d cross-int. Have you testified in this case before, and where?

Ans. I have, in Tremont street, in the District Court, I believe.

44th cross-int. Which way would flood tide set a ship that night?

Ans. The flood tide was fair tide for the schooner; the flood tide sets to the southeast through the Narrows.

45th cross-int. Did you talk about the matter the next day, in presence of one or more of the owners of the schooner?

Ans. I talked with somebody; I didn't know whether they were owners. It was on Union Wharf, I think, near my vessel. I think Mr. Littlefield, now present, might have been one of them.

46th cross-int. Was it not down near the Dry Dock, in East Boston?

Ans. No, sir. I remember that it was at East Boston, somewhere near the Old Ferry.

47th cross-int. Did they ask you to tell them the circumstances?

Ans. I don't recollect the conversation. I wanted to get a job out of them, to go down and get the vessel up, and I assented to anything they said. That is the first time they hadn't been at me. They had been at me at Union Wharf, and I did the same there. Anything they said, I agreed to it.

48th cross-int. When you got to the vessels, did you notice whether the ship's sails, or any of them, were aback?

Ans. They were.

Direct Examination Resumed.

1st direct resumed. When the owners of the schooner, or Mr. Littlefield, called on you to talk about this matter, did they or not pretend that they wanted to employ you to get their vessel up?

(Objected to, as leading.)

Ans. I thought they did.

2d dir. res. Did or not that appear to be their errand?

(Objected to.)

Ans. Yes, I thought it was.

3d dir. res. Did they or not say anything about employing you for that purpose?

Ans. I don't recollect the conversation. I couldn't tell much the words of what we had to say, but I took it from the tenor of the conversation, they wanted me to go after her.

4th dir. res. Did they employ you to do it?

Ans. No, sir.

5th dir. res. How many times did they come to you under that pretence?

(Objected to.)

Ans. Three times.

6th dir. res. Which did they talk most about, getting up their vessel, or your testimony in the case?

Ans. I don't recollect which. I was fishing for a job, and they were fishing for something else.

Cross-examination Resumed.

49th cross-int. What did they say? state any words?

Ans. If I was going to be hung, I couldn't tell you the exact words, but I know it was a little inclining towards a job.

50th cross-int. Can you give any of the words?

Ans. No.

HUGH CUMMISKEY.

The Deposition of Francis C. Cates, taken June 6th, 1860.

1st interrogatory. What is your name, age, residence and occupation?

Answer. My name is Francis C. Cates; age, twenty-three years; residence, Charlestown, Mass.; and am master of the steamer Huron.

2d int. How long have you been master of the said Huron, and what is her business?

Ans. I have been master a year since April last. Her business is towing up and down Boston harbor.

3d int. How long have you been engaged in that business?

Ans. About six years.

4th int. Did you or not go through the Narrows between Lovell's and Gallup's islands on the day the collision referred to in this case took place?

Ans. I did.

5th int. About what time did you pass through the Narrows last on that day, and which way?

Ans. I was coming up the harbor with the ship John Lamb, just about sunset.

6th int. Did you or not see the Marcellus on that trip? If so, where was she?

(Objected to.)

Ans. The ship Marcellus I saw some six or eight miles astern of us, coming up with a pretty good breeze, all sails set.

7th int. Did you or not see the schooner Empire on that trip? if so, where?

(Objected to.)

Ans. I met the schooner Empire just about half an hour after I passed through the Narrows, up by the lower middle.

8th int. How was the wind at that time?

(Objected to.)

Ans. The wind where we met the schooner was just about southwest. How it was in the Narrows I don't precisely recollect. There wasn't much of it. It was about southwest. Astern of us there was a good breeze.

9th int. State all you saw of the schooner Empire at the time you met her, and how you passed her?

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(Objected to.)

Ans. I was standing aft on board the ship, and saw that the schooner was steering kind of wild, and run forward to sing out to her. She first undertook to go to port of us, then she shifted her helm again and undertook to go to starboard. She shifted her course three times, and finally went to starboard of us, by our stopping the boat, and turning the wheels back, and putting our wheels on the ship and boat, both hard to starboard to go clear of her. I remember we had both wheels hard to starboard a minute or so, before we stopped the boat. We found that that wouldn't do, and we had to back the wheels.

10th int. If you had not had the power of stopping and backing your ship, what would have been the result?

(Objected to.)

Ans. We should have gone into the schooner.

11th int. How had the schooner the wind at the time, and was she close-hauled on the wind, or free, or how?

(Objected to.)

Ans. She had the wind southwest, as near as I could judge. I could tell the wind if I had taken particular notice. She was coming with a free sheet, her sheets a little started; a little off the wind.

12th int. Was there any difficulty in the schooner Empire going clear of you, if she had been properly steered?

(Objected to.)

Ans. I don't see why there should be any trouble. The channel is wide enough for a dozen vessels to pass. We were going a straight course.

13th int. Were you in the middle, or on which side of the channel?

Ans. We were just as near the middle of the channel as we could get. We always run in the middle of the channel with a deep ship.

14th int. Did you hail the schooner? if so, how?

(Objected to.)

Ans. I said to him, how the h—ll are you going there; you had better have some one at the wheel who knows how to steer, or you will get run down before you go far. I believe that is the substance of the words I used.

15th int. Was the Empire, at the time, properly steered? if not, why not?

(Objected to.)

Ans. I have told you she was not properly steered, or she would have kept clear of us. She wouldn't have acted in that way. We usually don't have trouble with schooners. They usually keep out of the way of large vessels. The John Lamb was about 900 tons.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants, who puts all the following Interrogatories, de bene.

1st cross-interrogatory. (*De bene.*) When was the first time you ever saw the schooner Empire in your life?

Answer. I can't tell you that, for I have seen her a great many times. I have towed her a number of times.

2d cross-int. Do you know who was in command of her?

Ans. No, sir.

3d cross-int. Do you know any of her officers?

Ans. No, sir.

4th cross-int. Will you now state when you ever towed her?

Ans. I have probably towed her four or five times within as many years, but when and where I towed her, I couldn't tell you now, without looking at the books at the office.

5th cross-int. Who employed you, or paid you, or commanded her when you towed her?

Ans. I can't tell you that.

6th cross-int. What cargo had she ever in when you towed her? Where did you tow her or leave her?

Ans. I can't say for certain, but I will go and find out.

7th cross-int. Where did she hail from?

Ans. I don't know.

8th cross-int. How large was she?

Ans. I should think she was something over a hundred tons, or thereabouts.

9th cross-int. Did you look at her after she passed you?

Ans. No, sir, I don't know as I did.

10th cross-int. How did you recognize her? by what?

Ans. When we passed her she had hogsheads on deck, and the next morning we went down through the Narrows, and I said that was the same schooner that bothered us last night.

11th cross-int. Where was she then?

Ans. She was on Lovell's island shore.

12th cross-int. Under water or above?

Ans. Her stern, a part of it, was above water, her bow was under water.

13th cross-int. Could you see any cargo then on her deck?

Ans. No, sir.

14th cross-int. How much were her sheets started, in answer to 11th direct question?

Ans. I should think she was about a point free.

15th cross-int. When she passed you did you go to windward or leeward, or stop, or back, to let her pass?

Ans. We went to windward of her. We went out of our course and stopped, and backed, both. We went to windward.

16th cross-int. How near were you to her when you altered your course to go more to windward?

Ans. I suppose we were probably two hundred feet or more.

17th cross-int. How fast were you going?

Ans. I should think we were going about three miles an hour. We were not going as fast as we could, we were waiting for the tide, the ship being large.

18th cross-int. Is that your ordinary rate of towing such a ship?

Ans. That is according which way we have the wind and tide. We can't tow a large ship more than four and a half or five miles an hour.

19th cross-int. When you say putting your wheels to starboard, what does that mean?

Ans. It means putting the helm to starboard.

Direct Examination Resumed.

1st direct interrogatory resumed. Are you certain you know or did know the schooner Empire by sight?

Ans. Yes, sir.

Cross-examination Resumed.

20th cross-int. Did you ever know more than one schooner of that name?

Ans. Not to my recollection.

21st cross-int. By what did you or do you know her?

Ans. I knew her the same as I know any schooner. I have no particular mark. She is rigged the same as any other schooner.

FRANCIS C. CATES.

Deposition of George Brown.

1st interrogatory. What is your name, age, residence, and occupation?

Ans. My name is George Brown; age, twenty-six years; residence, Boston; and I am a boatman.

2d int. Were you or not in the Narrows between Lovell's and Gallup islands at the time of the collision between the schooner Empire and ship Marcellus referred to in this case?

Ans. Yes, sir.

3d int. How came you there and what was your business?

Ans. I was down there slushing—buying grease of vessels.

4th int. Had you or not bought any before the collision? If so, where, and of whom?

(Objected to.)

Ans. Yes, sir. I first bought one barrel of the ship Buena Vista, and then two barrels and a half of the ship John Land, outside of the Spit Light. The steamboat Huron had hold of her at the time.

5th int. Where were you at the time of the collision referred to?

Ans. I was at the leeward side of the ship. I was hitched to the forward part of the main chains of the ship Marcellus. My boat was about at the mizzen chains.

6th int. How near the ship's side was your boat, and how long had you been there?

Ans. I was about four feet from the side of the ship, steering off a little so that the sea wouldn't knock me against the ship's side. I had been there fifteen or twenty minutes.

7th int. Were you or not there when the collision took place?

Ans. Yes, sir, I was there when they struck together.

8th int. At the time of the collision, how near Lovell's island was the ship Marcellus?

Ans. I thought I was going ashore before they did strike. I looked down and could see nothing but land ahead of us. The ship wasn't very far from the shore. I could throw a small chip of a stone ashore. I didn't take particular notice.

9th int. You say you were going ashore before the collision. Did you or not do anything to prevent it? If yea, what?

(Objected to.)

Ans. Yes, sir. Before the collision I thought we were going ashore, and I took out my sheath knife to cut my painter, so that I shouldn't go ashore with the ship.

10th int. Did you or not get on board the Marcellus? If not, why not? Who was in your boat with you?

(Objected to.)

Ans. I did not get aboard of the Marcellus. I couldn't get aboard. I was alone in my boat. They wouldn't allow me to get aboard without permission. I was looking out for the pilot to get permission, and I was looking out for the cook to buy the grease.

11th int. How was the wind at the time of the collision?

Ans. It was about southwest; I guess it was, if I am not mistaken. I didn't pay particular attention, but I think it was about southwest. It was a long time since, and I didn't think it was coming to a lawsuit.

12th int. How near the shore of Lovell's island had the ship been sailing for two or three minutes before the collision?

Ans. About the middle of the channel.

13th int. Did or not the Marcellus luff before the collision?

Ans. She kept away.

14th int. Did you hear any hail to luff before the collision? If so, how many and how long before the collision?

Ans. I heard "luff, luff," twice. I heard them sing out luff once, and then again about two minutes after, as far as I can recollect. It

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was about four or five minutes before they struck. I can't exactly say. The hail came from the forward part of the ship.

15th int. You say that at the time of the collision you thought your boat would get ashore. How long had you been so near the shore as that?

Ans. I didn't pay particular notice, because I was trying to talk with the pilot or cook. I looked down and saw nothing but land ahead, and thought we were going ashore, and I jumped to cut my painter.

16th int. Had you or not minded the shore particularly before that?

Ans. No, sir.

17th int. Did you or not see the schooner Empire before the collision?

Ans. No, sir.

18th int. What did you do after the collision?

Ans. I went ashore on Lovell's island and went home. I didn't go aboard the Marcellus.

19th int. Did you or not know Nathaniel Lannen? If so, what is his business?

Ans. Nat. Lannen I know. He used to be a boatman down on Long wharf. He has gone fishing now on the banks. He used to be master of the Camilla, a boat belonging to Manning & Quinn.

20th int. Was he in the Narrows at the time of the collision?

Ans. He was ashore on the point on the opposite side.

21st int. (*De bene.*) Have you ever heard him say, as to the vessels getting together, whose fault it was?

(Objected to.)

Ans. Yes, sir.

22d int. (*De bene.*) Whose did he say it was?

(Objected to for form and substance.)

Ans. He thought it was the schooner's fault. That is all he said to me.

23d int. At or opposite what place did the vessels come together, as near as you can state?

Ans. By the point of Lovell's island.

(Cross-examination waived.)

GEORGE BROWN.

Deposition of Hosea Jackaway.

1st interrogatory. What is your name, age, residence, and occupation?

Ans. My name is Hosea Jackaway; age, twenty-eight years; residence, Port Richmond, Penn.; and I am a seaman.

2d int. How long have you followed the seas, and in what business?

Ans. Sixteen years in the coasting trade.

3d int. Were you or not in the Narrows between Lovell's and Gallup's island at the time of the collision between the schooner Empire and ship Marcellus referred to in this case?

Ans. I was in the Narrows.

4th int. If on board any vessel, state her name and what she was, and her cargo?

Ans. I was on board the schooner Pequannock. She had a cargo of coal. I was mate of her.

5th int. Where on board your schooner were you standing at the time of the collision?

Ans. On the lee bow.

6th int. How far was your vessel from the Marcellus at the time of the collision?

Ans. About two lengths astern.

7th int. How long before the collision had you been so?

Ans. Fifteen minutes.

8th int. How were you heading?

Ans. I didn't look at the compass, but I suppose about northwest by north.

9th int. As to the Marcellus, how were you heading?

Ans. We might have been heading a shade to the windward of the ship.

10th int. If the ship had luffed, would she or not have crossed your course?

(Objected to.)

Ans. Yes, sir.

11th int. Did you or not notice the Marcellus down to the time of the collision?

Ans. Yes, sir. We were watching her.

12th int. What were you watching her for?

Ans. It is natural, coming through the Narrows, to watch a vessel ahead of us. If she alters her course we conclude there is something in the way ahead.

13th int. Did, or not, the Marcellus alter her course before the collision?

Ans. Not that I see.

14th int. If she had luffed would you have seen it?

Ans. Yes, sir.

15th int. At the time the Empire and Marcellus were coming together, how far was the Marcellus from the leeward shore?

Ans. Thirty or forty foot.

16th int. Was there, or not, room for your schooner to keep off, and go between her and the leeward shore?

(Objected to.)

Ans. No, sir.

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17th int. Did you, or not, see the schooner Empire before the collision?

Ans. I did not.

18th int. How was the wind at the time of the collision?

Ans. About southwest.

19th int. How was it for vessels passing up and down the Narrows?

Ans. Free both ways,—a little freest to go down.

20th int. Which will sail nearest the wind, a fore and aft schooner, or a square-rigged ship?

Ans. A fore and aft schooner.

21st int. How much?

Ans. A point and a half.

22d int. Did you, or not, lessen, or increase, or slacken your sails in the Narrows? if so, how?

Ans. We slacked our topsails down.

23d int. Have you ever testified in this case before?

Ans. No, sir.

24th int. After the vessels came together, where did they go?

Ans. Ashore.

25th int. How long after they came together, did they go ashore?

Ans. About two minutes,—somewhere thereabouts.

26th int. On which side did you pass them?

Ans. On the port side.

27th int. And were they then ashore?

Ans. They were.

28th int. Did they drift either way, or did they go direct ashore?

Ans. Direct ashore. The pressure of the wind pressed them right to leeward.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. How fast were you going?

Answer. About five knots.

2d cross-int. How far astern of the ship?

Ans. Two lengths, somewhere thereabouts.

3d cross-int. Did you stop after the collision before passing the ship?

Ans. No, sir.

4th cross-int. Where was the collision?

Ans. In the Narrows, off Lovell's island, not quite up to the upper point of Lovell's island,—it lacked half the length of the ship.

5th cross-int. Had the ship gone ashore when you passed her?

Ans. Yes, sir.

6th cross-int. Where did you first see the schooner?

Ans. Right after the collision.

7th cross-int. Did you notice there was any danger of a collision between the ship and any other vessel before it took place?

Ans. No, sir.

8th cross-int. Was it the crash of the collision that first drew your attention to it?

Ans. Yes, sir.

9th cross-int. When was your attention first called to the circumstances of the collision, after it happened?

Ans. Last Friday evening, by Capt. Burroughs.

10th cross-int. Have you consulted any record, or do you rely upon your recollection of how the wind was that night?

Ans. I rely upon my recollection how the wind was. How I recollect how the wind was, is by our fetching up from Point Alderton to the Narrows on the wind, and then keeping off, which makes the wind easier through the Narrows.

11th cross-int. Did you see any other vessels in the Narrows that night?

Ans. Nothing but the steamboat, until the collision took place, and then we saw the schooner.

12th cross-int. Did you see the steamboat before the collision?

Ans. Yes, sir. She came down after the ship, and was talking with the captain, when the steamer passed on. I didn't notice her again after that before the collision. After the collision I saw her again. She backed down to the ship.

13th cross-int. When and where did you first see her after the collision?

Ans. She might have been two hundred yards ahead of the ship, backing down to her assistance.

14th cross-int. How near the ship did you pass after the collision?

Ans. The width of the schooner, which is about thirty feet.

15th cross-int. Did you alter your course after the collision?

Ans. No, sir. At the collision we sheered, we luffed to keep clear of the ship.

16th cross-int. Should you have cleared her, if you had not sheered or luffed?

Ans. I don't think we would.

17th cross-int. How much did you luff to clear her?

Ans. About a point.

18th cross-int. Have you been often in the Narrows? how often?

Ans. I can't tell how often. I have been trading here ten or fifteen years.

19th cross-int. Did you come up in about the usual track of vessels that night with the wind as it was at that time?

Ans. Yes.

20th cross-int. What did your schooner draw?

Ans. Eleven feet.

21st cross-int. Were you going as fast as the ship?

Ans. There was no difference, that I see. We came across from Cape Cod together, and there was very little difference between them.

22d cross-int. How near the buoy at Point Alderton did you pass?

Ans. Being duskish we didn't see the buoy, that I recollect. We saw the beacon. We went within an eighth of a mile of the beacon.

23d cross-int. How near to Boston Light?

Ans. That is more than I am able to answer. To the best of my judgment, we might have been one-third of the way across the channel. We were on the Point Alderton side, and gave Boston Light a pretty good berth.

24th cross-int. Do you remember how near to the upper point of Lovell's island you passed?

Ans. I know the way through the Narrows, but I don't know the islands. I know Lovell's island. I thought you referred to the point where Bug Light is.

25th cross-int. Had you been noticing the lee shore particularly, before the collision?

Ans. Yes, sir.

26th cross-int. For what purpose?

Ans. To keep them to the right, as the law directs.

27th cross-int. Is that all the reason?

Ans. Yes, sir.

(After a pause, but without remark by either counsel or commissioner, the witness added):

"If we all should observe that rule there would be no collision."

(Mr. Russell thereupon asked if he intended that as a part of his answer, to which he replied, he did not. Mr. Scudder, proctor for respondents, claimed that the statement should be taken down, to which Mr. Russell objected,—and the statement is taken down as above, with this explanation of the circumstances.)

28th cross-int. Have you had any interviews with Mr. Scudder, before testifying?

Ans. No, sir.

29th cross-int. Have you not talked with Mr. Scudder before giving this deposition?

Ans. I have.

30th cross-int. Did you hear any hail from the ship before the collision?

Ans. I heard the echo of some voices. I couldn't tell whether it was the sailors pulling braces or some one hailing the schooner.

31st cross-int. Did it attract your attention at all at the time?

Ans. No, sir.

Direct Examination Resumed.

1st direct resumed. Are you now connected with the Pequannock, and have you any of the crew now on board, who were on board at the time of the collision?

Answer. I am in the same vessel, but we have none of the crew.

2d dir. res. If you had not luffed at the collision, what part of the ship do you think you would have hit?

Ans. We might have hit the braces—I mean the *yards*.

3d dir. res. Would you have hit the hull of the ship, in your opinion?

Ans. I don't think we would.

4th dir. res. How far do the yards of such a ship extend beyond her rail on the side?

Ans. When the wind is abeam they probably project out thirty feet.

5th dir. res. You say your attention was called to the matter by Capt. Burroughs last Friday; had you spoken of the matter to any one before? if so, where were you at the time?

Ans. I had mentioned it Thursday afternoon to Capt. Barnes, as we were coming in, between the Life Boat and Point Alderton.

6th dir. res. Are you able to state with certainty how near Boston Light or Point Alderton you passed in coming into Boston at the time referred to?

Ans. No, sir,—but to the best of my judgment we were an eighth of a mile off from Point Alderton.

7th dir. res. Through whose fault, in your opinion, did the collision occur?

(Objected to.)

Ans. I rather think it must be the schooner, by being over to leeward.

Cross-examination Resumed.

32d cross-int. Were the Marcellus' yards, that night, straight across, or how otherwise?

Ans. They must have been forward some; the wind was forward of the beam some.

33d cross-int. Do you know how her yards were, or do you say from the way the wind was, how they must have been?

Ans. I say from the way the wind was how they ought to have been.

34th cross-int. How were her sails when you passed her, aback or how otherwise?

Ans. I didn't notice them.

35th cross-int. Do you mean to say that you passed the ship thirty feet from her hull, or the extremity of her yards?

Ans. Somewhere thereabouts,—from the yards.

36th cross-int. Did any one come on board your schooner, to your recollection, as you came up the Narrows?

Ans. No, sir, not that I recollect.

37th cross-int. Was there any other schooner coming up at that time?

Ans. I didn't notice any.

HOSEA JACKAWAY.

Deposition of Charles Burroughs.

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is Charles Burroughs; age, thirty-nine years; residence, Dorchester; and I am in the coal business, — formerly I was ship-master.

2d int. How long have you followed the seas, and in what capacity, and in what business?

Ans. I have followed the seas about twenty-four years, employed in the coasting trade, and been master of a vessel the last sixteen years.

3d int. Are you, or not, acquainted with Boston harbor? if yea, how many times have you been in and out of said harbor?

Ans. I am acquainted with it, traded here steady for the last eight or nine years, I couldn't tell certain. I have traded here as often as ten trips a season.

4th int. Were you, or not, ever through the Narrows between Lovell's and Gallup's islands? if yea, how many times?

Ans. I have been through a good many times; I couldn't tell exactly the number of times. We don't always go through the Narrows in coming to Boston,—about half the time.

5th int. Were you, or not, in said Narrows at the time of the collision between the schooner Empire and the ship Marcellus? if so, which way were you going?

Ans. Yes, sir. I was coming in to Boston.

6th int. What vessel were you in, and what were you on board, and where was said vessel built, if you know?

Ans. I was on board the schooner Pequannock, as master of her. She was built in Wilmington, Del.

7th int. How far from the Marcellus was your vessel at and before the time of the collision?

Ans. About two lengths from her.

8th int. Ahead or astern of her, or how?

Ans. Astern of her.

9th int. Were you directly astern or on her quarter, and on which quarter, if either, and how much?

Ans. Perhaps heading half a point on her larboard quarter.

10th int. Where were you standing on board your vessel?

Ans. Forward. I guess I was standing right on the night-heads.

11th int. If the Marcellus had stopped and you had passed on your course, which side, if either, should you have gone of her, and how far from her?

(Objected to.)

Ans. I should have gone on her larboard side, perhaps about fifteen or twenty feet.

12th int. Did you see the collision?

Ans. Yes.

13th int. Did, or not, the Marcellus luff before the collision?

Ans. No, sir.

14th int. If she had luffed, would she or not have gone across your course?

(Objected to, as leading, after answer.)

Ans. Yes, sir.

15th int. How near the leeward shore was the Marcellus at the time the two vessels came together?

Ans. I should think she was about fifty feet, to the best of my judgment,—as near as I can tell.

16th int. Was, or not, the Marcellus as near the leeward shore as she could go with safety?

(Objected to, as leading.)

Ans. I should think she was.

17th int. How was the wind at the time?

Ans. About southwest.

18th int. Did you, or not, see the schooner Empire before the collision took place?

Ans. Yes, sir, I saw her.

19th int. When you first noticed her, on which bow of the Marcellus, if either, did you see her?

(Objected to.)

Ans. Rather on the larboard bow.

20th int. How was she heading when you noticed her?

(Objected to.)

Ans. She was heading down from Nix Mate's towards Gallup's island,—towards Lovell's island, I mean. In coming from Nix Mate she would have to head at first towards Lovell's island till she gets down round the shoal ground; she then dropped out of sight to the leeward of the ship, and I didn't see her any more until about the time the collision took place. Then I saw her jib-boom come across the ship's bow; see it out by the ship across the ship's bow.

21st int. Was there, or not, any difference in the Empire's course from the time she dropped to the leeward of the Marcellus, as stated by you, to the time you saw her coming out by the bow of the Marcellus? if yea, how much difference was there?

(Objected to.)

Ans. I understand the question, but I don't know how to answer it, because she wasn't in sight. All I can say is, that I saw her jib-boom across the ship's bow, and of course she must have altered her course to get there. There was no other way to get there, except she altered her course.

22d int. You say you saw her course when she dropped out of sight to leeward of the Marcellus, and that you saw her course when she came out by the bows of the Marcellus again; was there any difference in those two courses? if yea, how much, how many points?

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(Objected to.)

Ans. There was a difference in the courses. There was as much as four points.

23d int. How long before the collision was it that the schooner Empire dropped out of sight to leeward of the ship?

Ans. It might have been three minutes,—something like that,—three or four. I guess I have given you too short a time. It bothers about giving time in such a case as that. It may have been five minutes. It is hard to tell exact in a case of that kind, to a minute.

24th int. After she so dropped out of sight to the leeward of the ship, did you see her again at all before her bowsprit came out across the ship's bows, as stated by you?

Ans. I never noticed her.

25th int. Did you, or not, make any remark to any one as to the conduct of the schooner before the collision?

(Objected to, as leading, and generally.)

Ans. I can't say before the collision took place.

26th int. Do you remember whether you did after the collision?

(Objected to.)

Ans. I did.

27th int. Through whose fault, in your opinion, did that collision take place?

(Objected to.)

Ans. I should consider it was the schooner's fault.

28th int. Upon the facts stated by you, whose fault was it?

(Objected to.)

Ans. I should consider it was the schooner's fault.

29th int. How was the wind for vessels passing up or down the Narrows at the time?

Ans. About abeam.

30th int. Which, if either, will go nearest the wind, a fore and aft schooner or a square-rigged ship?

Ans. A fore and aft schooner.

31st int. How much?

Ans. A point to a point and a half. Some vessels will go nigher than others, but that is a fair average.

32d int. What became of the vessels after the collision?

Ans. They went ashore to leeward.

33d int. How soon were they ashore?

Ans. Between four and five minutes. They went right ashore.

34th int. How many hours is it from low to high water?

Ans. About six hours flood and seven hours ebb is a fair average.

35th int. How much, if any, does the time of tide vary from day to day?

Ans. About an hour and a half.

36th int. Do they grow earlier or later?

Ans. They grow earlier up to twelve o'clock, and then they grow later.

Cross-examination by T. H. Russell, Esq., Proctor of Libellants.

1st cross-interrogatory. Did you hear any hail from the ship before the collision?

Ans. Not to my knowledge.

2d cross-int. How soon after you noticed the bowsprit of the schooner out beyond the ship's bows did the collision take place?

Ans. It took place immediately when she came by her bow. If they hadn't come together, she would have gone across her bow.

3d cross-int. Did the collision take place at the same time that you noticed her in that position?

Ans. Yes, sir.

4th cross-int. Where did the collision take place in the Narrows?

Ans. Just inside of Lovell's point,—I mean just by Lovell's point.

5th cross-int. When you first saw the schooner was she above the point?

Ans. Yes, sir.

6th cross-int. Was she above the point when you lost sight of her, as you state?

Ans. Yes, sir.

7th cross-int. How far above, when you lost sight of her, as stated by you?

Ans. She might have been an eighth of a mile.

8th cross-int. How far was you then below the point?

Ans. We were a little distance further back than that,—say about an eighth of a mile and about two lengths of my schooner more, to the best of my judgment.

9th cross-int. How fast was you sailing?

Ans. About five knots.

10th cross-int. Did you see the steamer Rescue that night?

Ans. Yes, sir.

11th cross-int. When did she pass you, if at all?

Ans. She didn't pass us at all.

12th cross-int. Where did you see her?

Ans. Alongside of the ship. Sailing alongside of the ship before the collision, talking with the ship.

13th cross-int. When was that, and after that did you see anything more of her?

Ans. That was when she was coming in by George's island, rather before she was up to George's island. I saw her again just above the ship, and after the collision.

14th cross-int. Had you seen her between these times?

Ans. I paid no attention to her. She left the ship and went right on. I didn't see her again to notice her till we came up with her.

15th cross-int. Do you recollect, by the compass, how the wind was that night?

Ans. About southwest.

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16th cross-int. How do you now recall that? have you consulted any log?

Ans. I haven't consulted any log book. I recollect by sailing in on the wind.

17th cross-int. Had you taken any particular notice of how far the ship was from land before the collision took place?

Ans. I hadn't taken no particular notice.

18th cross-int. Did you stop your schooner after the collision at all?

Ans. No, sir.

19th cross-int. How far did you go from the ship as you passed her?

Ans. About twenty feet. You might add on five more. I can't tell exactly. It was about that.

20th cross-int. How long after the collision before you passed her?

Ans. Right away, as soon as we could sail that distance, two lengths of the schooner. It would take about three lengths to pass her.

21st cross-int. When you lost sight of the schooner what concealed her from your view?

Ans. The ship.

22d cross-int. Were the Marcellus' sails aback when you passed her?

Ans. I never took notice.

23d cross-int. Didn't the collision attract your attention to her?

Ans. Yes, sir.

24th cross-int. What was the Marcellus doing when you passed her?

Ans. She was laying in the Narrows and the schooner across her bow. She was in the act of going ashore.

25th cross-int. Do you remember whether any one came on board your schooner before the collision in the Narrows?

Ans. No, sir, I can't recollect.

26th cross-int. When was your attention first drawn to this collision by any one since it occurred?

Ans. Mr. Scudder was the first man who drew my attention to it, some week or ten days ago.

27th cross-int. Has he told you something about the circumstances of the collision?

Ans. He spoke about it.

28th cross-int. Has he told you what the pilot says about it?

Ans. No, sir.

29th cross-int. When was the collision?

Ans. I have got day's date, but I haven't got it here. I don't know as I can be accurate to the day. I forget whether it was September or August, 1859.

30th cross-int. Were you expecting any collision, or anything of the kind, before you saw the schooner's jib out beyond the bow of the ship, as you have stated?

Ans. No, sir.

31st cross-int. Had you a pilot?

Ans. No, sir.

32d cross-int. Were you in charge yourself of your schooner?

Ans. Yes, sir.

33d cross-int. Was there anything in the management of the ship that drew your attention to her before you saw the schooner in the position you state?

Ans. No, sir.

34th cross-int. How wide are the Narrows opposite the upper point of Lovell's island?

Ans. Five or six hundred feet at the narrowest point, opposite the point near which the collision took place, to the best of my judgment.

35th cross-int. Where was the steamer Rescue when you passed her?

Ans. Just above the ship.

36th cross-int. Lying still or in motion?

Ans. She was lying still till we came up with her, and then she started and got out of our way. We came near running over her.

37th cross-int. And from the time you saw the steamer alongside the ship Marcellus till you came up to her, as you say in the last answer, you had not seen her?

(Objected to.)

Ans. I said I hadn't taken any notice of her in the meanwhile. She was there all the while.

38th cross-int. Will you swear that you had seen her in that time?

Ans. I can't answer anything more than I have. I don't wish to say anything that isn't just so.

39th cross-int. Did you see her in that time?

Ans. I have told you all I have got to say.

40th cross-int. Will you answer whether you saw her in that time?

Ans. I saw her before I got up to her, of course. It would be a natural consequence we wouldn't run over her without seeing her.

41st cross-int. But till you saw her as you were approaching her, had you seen her after she went ahead of the Marcellus, as you stated?

Ans. I didn't pay any attention to her. I had other things to attend to. The steamboat hadn't been out of sight, I suppose.

42d cross-int. Have you the least recollection of having seen her in that time?

Ans. I have nothing more to say. I have said all I can say on that point.

43d cross-int. Can you say, or not, whether you have any recollection of having seen her in that time, and if not, why not?

Ans. I have told you all I have got to say. You have asked me the same question four or five times, and I have told you all I can say.

44th cross-int. Have you said whether you recollect that you saw her or not in that time?

Ans. I said I paid no attention to her, and that I saw her just before we came up to her. She left the ship, and I paid no attention to the steamboat, till after the collision; she was ahead of the ship, and we came near running into her.

45th cross-int. Do you now recollect that you saw her between these times?

Ans. I say I paid no attention to her, and don't recollect seeing her.

46th cross-int. Did you take any particular notice of any of the vessels in sight before the collision, except your own?

Ans. I was watching the ship.

47th cross-int. For what purpose?

Ans. Because she was right ahead of us; we were right along astern of her.

48th cross-int. Which was going the fastest?

Ans. Not much difference; about the same.

49th cross-int. Did you keep your eye on her all the time?

Ans. It isn't natural we should keep our eye steady on one object all the time. It is more than I am able to answer that I kept my eye on her all the while. It would not do to look at one object all the while. I kept watch of her enough to know how we was going with her.

50th cross-int. Had you any reason to watch her beyond that?

Ans. No reason beyond watching to see that we went along right; didn't get afoul of her.

51st cross-int. When you came near running over the Rescue had you altered your course at all?

Ans. No, sir. We run right straight along.

52d cross-int. How many men had your schooner on board at the time?

Ans. Seven.

Direct Examination Resumed.

1st direct resumed. Where is the crew you had on board now, if you know?

Answer. I don't know where they are. The man who was at the wheel is in Philadelphia.

2d dir. res. What cargo had you on board?

Ans. A cargo of coal.

3d dir. res. What proportion of the vessels going out and coming into the harbor of Boston pass through the Narrows referred to?

(Objected to.)

Ans. Perhaps one-third. Almost all the large vessels invariably go through there.

4th dir. res. Did you or not make any change in your sails after you came into the Narrows? if so, what?

(Objected to.)

Ans. We eased our sheet off a little, three or four points. The wind was a little freer when we got up to George's island, where we eased off.

5th dir. res. Did you increase or lessen or slacken your sail at all? if so, how?

Ans. We slacked our topsails down to the masthead to keep astern of the ship.

Cross-examination Resumed.

53d cross-interrogatory. Can you now recollect for months the course of the wind on each occasion you have come into Boston?

Ans. No, sir.

CHARLES BURROUGHS.

United States of America, Massachusetts District, *ss.*

I, Henry W. Fuller, clerk of the Circuit Court of the United States for the First Circuit, Massachusetts District, do hereby certify that the foregoing is a true copy of the record, and of all proceedings in the cause of Hugh N. Camp, Edward W. Brunsen, and Charles Sherry, libellants, *v.* The Ship Marcellus, in this court determined, including all the evidence filed therein.

[SEAL.] In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Boston, in said district, this third day of December, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States, the eighty-fifth.

H. W. FULLER,
Clerk.

Supreme Court of the United States.

JOHN A. BAXTER et al., claimants and appellants,
v.
HUGH N. CAMP et al.

United States of America, District of Massachusetts.

Be it remembered, that on the sixth day of December, in the year of our Lord eighteen hundred and sixty, at Boston, in said District of Massachusetts, before me, Elias Merwin, a commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared Nathaniel Lannin, a witness for the appellees, in a certain civil suit depending in the Supreme Court of the United States at Washington, wherein John A. Baxter et al. are claimants and appellants *v.* Hugh N. Camp et al.; and the said Nathaniel Lannin being by me first carefully examined and cautioned and sworn to testify the whole truth relative to the issue, did depose and say, in answer to interrogatories proposed by T. H. Russell, Esq., for the appellees as follows, viz.:

1st interrogatory. Please state your name, age, residence, and occupation.

Ans. My name is Nathaniel Lannin, age twenty-four years, residence Boston, and I am a boatman, and have been twelve years.

2. Are you acquainted with Boston harbor, and particularly the Narrows?

Ans. Yes, sir.

3. How often have you been through the Narrows?

Ans. I suppose I have been through four or five thousand times, backwards and forwards.

4. Did you see a collision between the ship Marcellus and schooner Empire in September, 1859?

Ans. Yes, sir.

5. Where was it, and at what time?

Ans. In the Narrows of Boston harbor; I should say between five and six o'clock in the evening.

6. Where were you at the time?

Ans. I was on board the yacht Young America.

7. Where was she, and what doing?

Ans. She was aground on the Cape Cod shoal in the Narrows, on the southerly side of the channel; the yacht was waiting for the tide to float her off.

8. Where were you on the yacht?

Ans. I was on the port side, sitting to windward; the yacht was heeled in towards the island.

9. Who was with you on the yacht?

Ans. Captain Quinn.

10. Did you see the schooner when she rounded Nix's Mate?

Ans. Yes, sir.

11. Did you see her till the collision?

Ans. Yes, sir.

12. What part of the channel was she coming down in?

Ans. The schooner was on the weather side of the channel, close hauled on the wind.

13. After she rounded Nix's Mate and got on her course, did she change her course before the collision?

Ans. No, sir, not as I could see.

14. Where was the ship when you first saw her?

Ans. When I first saw the ship, she was coming round the point of George's island.

15. After you first saw her, did you see her till the collision?

Ans. Yes, sir.

16. What part of the channel was she sailing up?

Ans. I should think she was about mid channel, put about, or a little to leeward.

17. Did you hear any hail on the ship before the collision, and if yea, what?

Ans. Yes, sir. I heard a man forward sing out, "luff."

18. What did the ship then do, if anything?

Ans. The ship luffed to then, and run right into the schooner, right amidships.

19. If the ship had not luffed, would she have struck the schooner?

Ans. No, sir, she would not. She wouldn't have touched her if she hadn't luffed.

20. How much did she luff to the best of your judgment?

Ans. I should say she luffed as much as a point.

21. Where did the collision take place in the Narrows?

Ans. A little inside the upper point of Lovell's island.

22. When did you first see any danger of the vessels coming n collision?

Ans. I saw no trouble at all with them till the ship luffed. If the ship hadn't luffed there would have been no trouble at all with them I think, I am certain.

23. How was the tide at this time?

Ans. I should say it was about an hour's young flood.

24. After the ship struck the schooner, where did the vessels go to?

Ans. They drifted ashore on the beach on Lovell's island side.

25. Did you go over to them?

Ans. Yes, sir, me and Captain Quinn.

26. How soon after they struck?

Ans. Just as soon as we could get into our boat.

27. Had the schooner sunk when you got over?

Ans. No, sir, not hardly, but was going down fast.

28. Did you stay till she had sunk?

Ans. Yes, sir, stayed all night.

29. How far was the ship from you when she struck the schooner?

Ans. About a hundred and fifty feet, I should think, two hundred feet.

30. Where have you been this past season?

Ans. I have been on the Grand Bank, fishing.

Cross-examination by H. A. Scudder, Esq., Proctor of Appellants.

1 cross. When were you first asked to testify in this case?

Ans. A very short time after it happened.

2 cross. Were you then asked to state what you knew about it?

Ans. Yes, sir, and I did state it.

3 cross. From that time to this, has your attention been called to the matter, if so, when?

Ans. Yes, sir; I can't exactly say when. Since I came home from sea, I have been up here about six weeks ago.

4 cross. Do you know how the wind was at or about the time of the collision?

Ans. I think the wind was about southwest, south-southwest.

5 cross. Do you mean to say that you saw the ship all the time, from the time you first saw her coming round the point to the time of the collision?

Ans. Yes, sir.

6 cross. Do you remember what sail she had set?

Ans. No, I don't hardly remember; I know part of them, but I don't remember all of them.

7 cross. How were they trimmed?

Ans. She was almost before the wind. The sails were pretty nigh square, braced up a little.

8 cross. Did you see the schooner all the time after she rounded Nix's Mate down to the time of the collision?

Ans. Yes, sir.

9 cross. You say you went over to the schooner after the collision and stayed there all night; what were you doing there all night?

Ans. We stayed there to accompany the men that were on board the schooner that got ashore.

10 cross. Why did you do that?

Ans. We did it because we felt a little for the fellows; we thought it was too bad for them to lose their vessel.

11 cross. Where were you during the night?

Ans. Part of the time on the beach and part of the time on board our yacht.

12 cross. What were you doing?

Ans. We were doing nothing more than talk and walk round the beach.

13 cross. Were you acquainted with the crew of the schooner?

Ans. No, sir.

14 cross. Did you talk with them during the night?

Ans. Very little conversation with the crew; principal part of our conversation was with the captain. The principal reason of our staying there was to bring the captain up next morning.

15 cross. Were you acquainted with the captain.

Ans. No, sir.

16 cross. Did the captain remain there all night?
Ans. Yes, sir.

Direct Examination Resumed.

1 dir. res. Do you remember being called into court by Mr. Littlefield or Mr. Edwards to testify, when this case was tried before Judge Sprague?
Ans. Yes, sir.

NATHANIEL LANNIN.

The respective counsel hereby agree that the foregoing deposition may be filed and used in the case named in the caption, with the same effect as if taken under the rules of court.

H. A. SCUDDER,
Proctor for Appellants.
C. T. & T. H. RUSSELL,
Proctors for Appellees.

United States of America, District of Massachusetts.

I, a commissioner in and for the District of Massachusetts, appointed by the Circuit Court of the United States for the First Circuit, under the act of Congress, authorizing the appointment of commissioners "for the more convenient taking of affidavits and bail, to be used in civil causes depending in the courts of the United States," and the acts additional thereto, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the said Nathaniel Lannin is a material and necessary witness in the cause in the caption of the said deposition named.

I further certify, that on the sixth day of December, in the year eighteen hundred and sixty, I was attended by said T. H. Russell, Esq., proctor of the appellees, and by H. A. Scudder, Esq., proctor of the appellants, and by the said witness, who is of sound mind and lawful age, and the said witness having been by me first carefully examined, and cautioned, and sworn to testify the whole truth in the cause aforesaid, did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him, was by me reduced to writing in the presence of the witness, and that he subscribed the same as and for his deposition in my presence, and that I have retained the said deposition in my possession for the purpose of forwarding it under my own hand to the court for which it is taken, with this certificate of the reason of its being taken.

I further certify, that I am not of counsel or attorney, to either of the parties in the cause, in and for which the said deposition is taken, nor in any way interested in the event of said cause.

In testimony whereof, I have hereunto set my hand, this sixth day of December, in the year of our Lord eighteen hundred and sixty.

ELIAS MERWIN,
Commissioner of the Circuit Court of U. S., Mass. District.

Witness's fees, 1 day, ...	$1 50
Commissioner's fees, ...	$10 00.

Indorsed: 1860, December Term. No. 262. John A. Baxter et al., claimants and appellants, *v.* Hugh A. Camp et al. Deposition of Nathaniel Lannin, taken by the appellees, to be used on the trial of the above cause. Filed, 20th Dec., 1860.